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*NEW ASPECTS OF UNEMPLOYMENT INSURANCE

EVENTS change attitudes. Unemployment compensation is no longer regarded as a disreputable interloper. Perhaps it is because she contrasts favorably with the newcomers at the economic table. Government relief on an enormous scale or its rivals, public works or civil works relief, have elbowed their way in. They have very bad manners indeed, and make unemployment compensation seem relatively modest and sensible.

It must be confessed that unemployment insurance had innately certain obvious disadvantages that her apologetic friends found it difficult to explain away. She was by no means as impeccable as her *arrivée* relative, workmen's compensation insurance, despite the striking resemblance to that participant at the community table who was for a long time accepted as a most respected and respectable member. For this resemblance though striking was superficial. For example there is little danger of malingering under a workmen's compensation scheme, which only provides a man with benefits during his incapacity because of physical injury. A normal man does not deliberately cut off his hand or maim himself. On the other hand, as a very distinguished English authority on unemployment insurance stated to the writer in an expansive moment, "everybody loves a vacation."

Indeed the objections to unemployment compensation alias unemployment insurance were formidable. Even advocates were perplexed as to how to avoid decreasing the "mobility

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of labor"—they feared that a man thrown out of a job because of a change of style or technical method would lose his incentive to "hustle" for a job in another industry. Methods have been devised under the English act, it is true, to ascertain whether a man has used every effort to find a job before paying him the benefit, but many have felt that hustling for a job and hustling to make a case to prove you couldn't secure a job are different procedures.

So there is a *prima facie* case against unemployment insurance but events have created conditions that have made the alternative even more objectionable. During good times one could feel that the advantage of having a man hustle for a job outweighed the distress caused during the unemployment period. Depressions of bygone years, though severe, were on a different scale. The dangers of unemployment insurance, it could be honestly and plausibly argued, outweighed the objections of having hungry men without anything but private succor to fall back upon. But the scale has changed. In unemployment under modern depressions we are faced with a situation of such dimensions that the government must inevitably assume the burden of preventing starvation which neither our social conscience nor our social fears will permit. Government relief means complications *political* and *fiscal* that outweigh the complications of unemployment insurance. For, as I have said, government relief whether direct or indirect makes unemployment compensation seem relatively modest and sensible.

I doubt whether business men appreciate fully the dilemmas that face the unfortunate government authorities who happen to be in office during such a period. Indeed sometimes I play with a fantasy of having every business man devote a sabbatical year to running government. Then he might appreciate some of the difficulties that confront a governmental administrator faced with an emergency situation. For example, say our B M A (business man administrator) is governor or mayor elected soon after a great depression has begun. To his dismay he finds that because of business conditions tax collections are much smaller than his predecessors

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estimated. On the other hand, state salaries are fixed and thus expenses for carrying on public activities have not diminished an iota. Essential services such as police, health, education and fire protection must be carried on or chaos will result. The credit of the city is threatened and so he cuts these items to the bone, but despite a rigorous, almost cruel paring he finds it difficult to balance the budget. Long study of the problem with his advisers and with the legislative leaders evolves a scheme for new taxes and decreased expenses that will just about balance the budget. Everybody is happy till the Commissioner of Welfare appears on the scene and points out that the provision for relief is insufficient. Something more adequate must be done to take care of the hundreds of thousands of unemployed whom the depression has thrust from factory to the street. This is the straw that breaks the camel's back. The mounting cost of relief brings about an unbalanced budget. The bankers who had consented to float a bond issue withdraw — the city's credit is destroyed — the bonds of this community and many other communities faced with a similar situation tumble. I have recited this course of events to indicate that unemployment insurance is no longer to be classed as a social humanitarian problem. It is a link in the chain of governmental business and finance. It is a problem not solely for the social worker but for the financial and business economist.

Municipal bonds are held throughout the country in large amounts by banks and the slump in the market quotations for these securities was an aggravating cause in bringing about bank failures during the acute phase of the depression. The fear that governmental budgets both federal and local could not be balanced has been an important factor in delaying the revival of business confidence. Thus in its effect on securities, through shaking confidence in the ability of government to control its financial soundness, and also indirectly in its depressing effect on municipal securities, governmental relief for unemployed is probably an important factor in prolonging the depression. Were there adequate reserves for defraying the cost of unemployment relief, governmental authorities would

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be relieved to the extent of the funds accumulated. Whether the funds accumulated would relieve every employee is another question which we will discuss later.

To the extent that funds are available, unemployment compensation, unemployment insurance, call it what you will, would be an important influence in shortening the vicious circle of depression.

I am quite conscious of the other humanitarian arguments for unemployment insurance which are just as cogent. It is an indignity for a man thrown out of work to be dependent on public charity.

But my recital of the part unemployment relief plays in complicating public administration was made with a purpose. That purpose was to demonstrate that unemployment insurance has developed from a social, humanitarian problem into a problem of governmental and business finance. Its usefulness no longer must be weighed as a poultice for symptoms which result from economic ills. It must be appraised as a means of arresting later phases of the illness itself. Formerly it was a problem mainly discussed by social workers. Now it is recognized as a problem which must also be studied by economists specializing in public and private finance.

One of the advantages of having unemployment compensation funds available during a depression is that it will enable us to judge the economic potency of public works without having to take into consideration their purely relief functions. For one of the difficulties of judging the effectiveness of public works has been that we have never been quite sure whether their proponents had in mind the usefulness of public works as a means of stimulating industrial activity generally, or the usefulness of public works in providing immediate relief for the unemployed.

As far as providing immediate relief to the unemployed is concerned, there can be no doubt that direct benefits, whether through the government or from some fund, are the most inexpensive method. English experience bears this out. A striking illustration of the comparative expense of public work as compared with insurance may be seen in the following

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excerpt from the *Final Report of the Royal Commission on Unemployment Insurance, 1932,* which indicates that, in the particular instance given as the example the cost of the former was four times as great as that of insurance:

> But it must be admitted that so far the common experience of relief works, or of works especially put in hand by Public Authorities in order to absorb part of the local unemployed population, has not been encouraging. The work has been undertaken on a wage basis. The wages cost has been high for the work done, and, in addition, the capital and supervisory costs have been heavy. The returns of the Unemployed Grants Committee show that in round figures it cost £1,000,000 to keep 4,000 men in employment for twelve months. To pay Unemployment Benefit to the same number of men for the same period would have cost about £240,000 at the rates of benefit in force in October, 1931 (£220,000 at current rates of benefit). It is doubtful whether the economic value of the work approaches the difference between these sums.[1]

The only possible argument for utilizing public works as a means of direct relief for the unemployed was that this was a more tactful method of relief from the point of view of the recipient than a dole handed out by a government with its associations of charity. Unemployment compensation will provide an equally dignified method and will be far less extravagant than the public works method.

With the immediate relief problem largely taken care of by unemployment reserves, the economic usefulness of public works as a stimulant to business can be objectively determined in the light of the best economic experience without any humanitarian considerations to complicate the decision.

There are two arguments advanced by those who urge the usefulness of public works as a method of "priming" business. One is that such a program will put money into the hands of those employed on the project and thus provide consumer purchasing power. This, of course, is done more thoroughly and less expensively by direct relief methods. The second

[1] P. 335.

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argument, which applies exclusively to public works, is that they will stimulate private industrial activity by stimulating orders from private industry. It is an argument of great force, but against this it is urged that whatever business activity public works induce is counterbalanced by the fears of business men that an unbalanced budget will be created. There are other complications which are suggested, for example, the tendency of public works projects to tempt people from jobs because of the political necessity for paying wage rates which are higher than wage rates in non-governmental jobs. These arguments pro and con should be weighed without having our judgment warped consciously or unconsciously by our very praiseworthy desire not to let people starve. With immediate relief provided for the great majority of unemployed our judgment can be more objective.

Then again we have had the demonstration of a sort of pseudo PWA that has been introduced, namely the CWA, which was proposed because less expensive than PWA—but it was hoped as dignified—and less demoralizing than the direct government dole with its tinge of charity. The result in the opinion of some has been just as demoralizing as direct relief because, though it may not have had the tendency to cause the recipients to cringe, it has caused them to dawdle. I am not suggesting that CWA was not a necessary expedient. I claim that the fact that it was necessary to improvise such a device discloses a serious gap in our social arrangements. An organized, dignified reserve fund to which the employees are entitled because they have participated in building it up, should obviate the necessity of any such expedient.

Having concluded that it is sounder policy initially to make the great mass of unemployed wards of the trustees of the unemployment reserve fund rather than wards of government, we next consider the problem, how adequate the fund will be to relieve unemployment. Now this must for some time be a matter of guess work. It depends to a large extent upon the safeguards that are introduced to make it likely that large reserves will be accumulated for "hard times." And of course if funds are collected by industries as is later suggested,

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there will be great variations in the surpluses of various industries. One economist has estimated that as large a total fund, or rather funds, as $3,500,000,000 could have been accumulated in this country from 1923 to 1929, but this has been questioned as fantastically large by other economists. Personally, I would not venture to make any guess as to how large a fund can be accumulated, but I am very emphatic in believing that in setting up any fund the emphasis should be laid upon relieving the unemployment that takes place during "hard times" and not allowing the funds to be dissipated during times of comparative industrial prosperity. For unemployment can be very broadly divided into the unemployment that takes place for various reasons during "fair weather" (which I have not the space here to analyze and discuss) and the unemployment that takes place during periods of severe business depression.

What distinguishes the many types of "fair weather" unemployment from widespread unemployment during "hard times" is that distress is apt to be much milder among those unemployed, while the number of those who are unemployed is but a small fraction of those who find themselves out of work during "hard times."

Indeed, the difference in extent and intensity of distress caused by "hard times" unemployment, as compared with that caused by "fair weather" unemployment, is so great as to amount to a difference of substance rather than of mere volume. In Ohio, during the comparatively prosperous years 1923 to 1929, unemployment varied between 5 and 15 per cent; but in 1931 the percentage of unemployment was 30. Thus the depth and breadth of these two unemployment problems vary to such an extent as to make them different not only in degree but in their very nature. The one is a great social tragedy which menaces our entire economic system; the other a localized disaster or inconvenience. One is an individual sickness or a local outbreak; the other an epidemic in which everyone is in danger of being infected.

Details of any unemployment insurance scheme will depend largely upon whether we are primarily interested in relieving

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"fair weather" unemployment or "hard times" unemployment. And, should we decide that the latter is our main objective, a long "waiting period" should become an important item in any future scheme. This waiting period is the period after a worker loses his job during which no benefits are paid to him. It is the pivotal and crucial provision in any insurance scheme, and its length—that is, the number of weeks before which benefits are paid—has an important effect upon the manner in which the insurance scheme works. It is a controlling feature in determining the period during which the funds shall be distributed, whether during prosperous times or during hard times.

There is, after all, a maximum amount of premium that industry can afford to pay; and this premium will go much farther in relieving real distress if it is not dissipated during periods of minor distress. One can usually buy a surprisingly large amount of major risk protection by rigorously eliminating any attempt to protect the minor risks at the same time. This is a well recognized principle that is found in accident and health insurance. If we agree that hard times unemployment insurance *is* our main purpose, we must realize that there is danger of joining this main goal with the minor objectives involved in the alleviation of seasonal and technological fair weather unemployment. Any funds accumulated may be largely dissipated during reasonably good times by substantial payments for relieving these minor types of "fair weather" unemployment.

This was the experience of the administrators of the most important union unemployment insurance plan in this country. Despite the wisdom and shrewdness displayed by these organizers, a large part of the funds was used up in providing for seasonal unemployment during fairly good years. The result was that the reserves were none too large when hard times really came.

It is decidedly more important to provide benefits for an adequate period during hard times, rather than to start the payment of benefits after a comparatively short time of unemployment. Most unemployment insurance schemes in this

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country have provided a pitifully inadequate period of benefits when the needs of a period of prolonged depression are considered. The highest scheme contemplates only sixteen weeks of benefits. At the same time the waiting periods suggested in such plans have been comparatively short, two or three weeks. Under the actuarial principles already mentioned, an extension of the waiting period would provide many more weeks of benefit without increasing the yearly premiums. The difficulty will be—if there is such a provision for a comparatively long waiting period—to prevent its being modified. Every effort must be made to prevent an impairment of sound principles under the pressure of political expediency. If there is adherence to this principle, very substantial reserves could be built up for our next hard times.

Even after we have done our best in setting up a plan to preserve the solvency of the fund, the reserves of some if not all of the various pools set up may still prove insufficient to take care of those out of work during the entire period of "hard times." Because of this likelihood that the funds may be exhausted before the depression is over, some skeptics have thrown up their hands and scouted the whole principle of unemployment insurance, but of course this reasoning is unsound and almost infantile. A device should not be rejected just because it does not solve the entire problem. The same question has been raised in a different form in arguing that unemployment is not insurable because it cannot be adequately measured or relieved. This whole technical objection can be waved aside. Whether unemployment is insurable in a technical actuarial sense is largely irrelevant as long as there is no misrepresentation. But we must decidedly face the question that the funds, at least in some of the so-called "pools", will be exhausted; and then we come to the problem as to what provision should be made in an orderly fashion for taking care of workers after the funds are exhausted. In this, foreign experience will be interesting.

This experience proves that if there is only a first line of defense against unemployment through insurance based on rigid rules, and if, when a man has exhausted his right to,

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let us say, fifteen weeks of benefit, the only other alternative is the public charity, where he has to line up alongside the disabled, the feeble-minded, and the absolutely destitute, there is bound to be a revolt against this alternative and the insurance plan will be manipulated through political pressure in order to maintain the self-respect of the workers who are in distress. If, however, it is definitely recognized that insurance is only part of the whole plan, and that provision for those who exhaust their right to benefits must be made through what might be called a second line of defense, the latter will be a mainstay in protecting the insurance plan as such. This is clearly pointed out in the British report:

> Past experience shows that, when unemployment increases and large numbers of workers fall outside the limits of the scheme, the basis of insurance is challenged, and, under a State scheme, pressure is brought to bear on Government to extend those limits. This pressure to ignore the limits and restrictive conditions of the insurance scheme will, in times of depression, be irresistible unless a satisfactory basis is found for some alternative provision outside insurance which is suited to modern needs and is acceptable to the public conscience. . . .
>
> The developments of the last twelve years make it abundantly clear that the scope and provisions of the Insurance scheme must be determined to a very large extent by the arrangements that exist outside it.[2]

Thus present-day thinking does not try to get all unemployment wiped off the social slate by an insurance scheme. It endeavors to build up an insurance plan which will give a scale of benefits that can be payable from unemployment reserves, but which recognizes the fact that those benefits may not take care of the whole field of unemployment, and that other forms of aid may be necessary. Unemployment insurance is only one of three major parts. A second part is called emergency grants, or some other euphonious name, and is not part of the insurance plan. The third part is called definitely "relief" and it is the final charitable contribution to unemployment.

[2] *Final Report of the Royal Commission*, pp. 117-118.

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I shall not go into many further details, as the difficulty in a cursory presentation of the problem is that it has been so much cluttered by a consideration of detail that it has confused those who are attempting to get a bird's-eye view of the problem. But there are a number of details that are important and that it would be well to go into before concluding this discussion.

In the first place there is the large question as to who is to contribute to the fund. There is a very decided difference of opinion among those interested in the subject, but the best opinion would seem to be that contributions should be made by employers and employees—and that the state's contribution should be confined to providing relief for the second line of defense when the "insurance" funds are exhausted.

Why the state should not contribute is quite obvious. It is most important to preserve the atmosphere of self-help. While technically unemployment compensation cannot strictly be called insurance, it is well to preserve the atmosphere of insurance with its association of providing for one's own problems. If the state contributed there would be continual pressure to increase benefits even during good times and we would be enmeshed in all the political dangers which we have experienced in our pension abuses. It would involve turning what should be a "dutch treat" scheme into a relief scheme, when our very purpose is to relieve the state of relief except as a last resort.

This principle of preserving the atmosphere of self-help applies also to having the employees contribute. It is most healthy from the point of view of the employees' self-esteem to have unemployment compensation a matter of business relations. Again, with all the dangers inherent in paying men while idle it is well to have every worker interested in preserving the solvency of the funds as long as possible and disposed to frown upon any attempt to take advantage of the plan. Incidentally, employee contributions are part of every European system with the exception of Russia.

Then there is the very important problem of how the funds are to be collected and administered. There are three ways

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in which funds can be administered: first, individual reserve funds for each employer; second, a general state-wide or country-wide pool; and, third, separate funds and administration for each major industry. Informed opinion as to which is the best method has swung to and fro. There are advantages and disadvantages in all three methods, depending largely on the objectives sought. Those pressing for individual employer reserves do so largely because they are primarily interested in the preventive side of the problem and feel that unless the incentive to control unemployment through stabilization is retained, unemployment insurance will tend to increase rather than to decrease unemployment. Those in favor of pooled reserves take the attitude that a certain amount of unemployment is an inevitable result of our business routine. They are interested more in providing a dignified unemployment relief without the taint of charity for those out of work than they are in stabilization.

But there are other advantages and disadvantages, to be balanced against each other. One advantage of the individual employer reserve system is that during normal times the employer with a high turn-over, whether from poor management or other causes, does not drain the reserves of the employers with a good record. A balancing disadvantage is that the reserves of the poorer companies are apt to be exhausted in case of even a mild depression. On the other hand, the pooled fund has this to offer—at least in the early stages of the depression a cushion is provided for all unemployed industrial employees in the state. Thus, even if the pooled funds are not sufficient to last through a major depression the state will not be called upon for relief until these funds are exhausted.

But just as we have balanced the disadvantages of the plant reserve plan against the advantages, so we must not fail to itemize the limitations of the pooled plan. Against the advantages of a state-pooled fund plan, we must weigh the fact that it makes it impossible to localize the difficulties which may take place in certain industries. The excessive unemployment among the employees in these troubled industries may so

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impair the pooled reserves that the healthy industries with a normal unemployment record are deprived of the protection they had helped to build up.

The fact that each plan has its advantages and disadvantages has led to the suggestion of combining the two systems. The suggested compromise is to permit companies which can give adequate guarantee as to their financial competency to set up individual reserves, and, further, in order to satisfy those who fear that this permission will mean that only the poorer risks will be left in the central pool, to provide that a certain part of the reserves of these companies, say one-third, be paid into the central pool.

And then there is the proposal for allowing separate industries to set up industry-wide funds. This would mean in many cases cutting across state lines. Personally, I believe that the industry-wide funds have much to offer because they prevent the danger of freezing labor in decaying industries; but under our federal system this cutting across state lines would, it is feared by some, unnecessarily complicate any system.

My own personal belief is that we should experiment with individual plant reserve and industry-wide systems, side by side with state-wide pooled reserves for concerns and industries not strong enough to provide their own reserves, and then have the individual reserve systems (whether individual company or industry-wide) contribute something (not too burdensome) to the general pool. This is the method suggested in the New Hampshire plan. There should also be provision for emergency grants, to which I have already alluded, to be furnished by the state for taking care of workers after the regular insurance funds have been exhausted. But such provision by the state should be sharply distinguished from the employer-employee supported compensation system.

When it comes to the question of investment of funds, we are entering into a field in which there is much conflict among monetary authorities. Some contend that it is almost impossible to invest the fund so that it will not exercise a disturbing influence, accentuating the excesses of the boom and the depths of the depression. Of course, it will depend on how

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large and therefore how unwieldy the reserves become. But personally, despite doubts of some unbelievers, I have no question but that a satisfactory means of investment or deposit can be arranged which will make it possible for monetary authorities to make the most constructive use of the funds from the point of view of the general monetary health of the country. The present most authoritative proposal is to deposit the funds with the Federal Reserve Banks or in the United States Treasury.

These then are the main considerations underlying unemployment compensation. Let us recapitulate:

(1) Any misgivings that we may have had as to the dangers of unemployment insurance are more than counterbalanced by the advantages of not having the whole relief problem dumped into the lap of government.

(2) It is essential that as far as possible the unemployment funds be not frittered away during periods of prosperity, but be preserved for "hard times".

(3) Without misrepresenting unemployment compensation as completely covering the insurance risk, we should preserve the atmosphere of insurance with its associations of self-help. For this reason contributors to the "insurance" funds should include employees as well as employers and exclude the state.

(4) There should be provision for individual plant reserve and individual industry reserve funds supplemented by state-pooled reserves.

(5) Some provision must be made in an orderly fashion for taking care of workers through government relief funds if and when the "insurance" funds are exhausted.

In any event unemployment insurance is at our threshold. It is imperative that she be properly equipped to make an effective member of the economic community.

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JUSTICE SAMUEL F. MILLER[1]

A Study of a Judicial Statesman.

I

THE American system of constitutional limitations calls for a peculiar type of judicial statesmanship. It may or may not be wise to make the courts a point of final reference on matters of governmental policy; but where the system prevails political science must be more than ordinarily concerned with the judicial process. The mode of proceeding and the form in which its results are cast are so much more specialized in judicial than in legislative or administrative action that it is difficult to discern just how far the judge is performing the function of the statesman. Generally the fiction is maintained that the Court is but discovering the judgment which the Constitution itself pronounces upon the case at hand. Or resort may be had to such obscurant phrases as "the spirit of our free institutions", "fundamental conceptions lying at the basis of the social compact", or "the general principles of jurisprudence". Yet the element of deliberate choice and purpose is very considerable, as may be seen from observing the adjustments which result from the impact of a dominant personality among the justices.

The present study is concerned with Justice Miller, who in his service on the Supreme Court from 1862 to 1890 proved to be one of the most significant makers of our constitutional law.

There is little apparent in the early background of Samuel

[1] For information concerning the personal background of Justice Miller the author is indebted, among others, to Mrs. Lida M. Touzalin of Paris (Justice Miller's daughter); Mrs. Coker Clarkson of Scarborough, N. Y. (his granddaughter); the late Judge Frank Irvine (his nephew); and to John Stokes Adams, Esq., of the Philadelphia bar. The letters quoted hereinafter were written by Miller to his brother-in-law, Wm. Pitt Ballinger, of Galveston, Texas, a leading lawyer in the Southwest. They were made available through the courtesy of Mrs. Clarkson. The interpretation is, of course, the author's.

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Freeman Miller by which his later career can be explained. His father was of Pennsylvania German stock, and had emigrated to Richmond, Kentucky, in 1812. Miller entertained a poor opinion of his father, and attributed his own strength of character to his mother, Patsy Freeman.[2] The Freeman family had come from North Carolina. Schooling at Richmond was inadequate, and for better or worse Miller's mind bore no marks of the trammels of formal education. He had no predilection for manual labor; in later life he used to say that his motto was, "Never walk when you can ride, never sit when you can lie down"; that it was fortunate he had been born poor, as otherwise he would never have worked. Of course this was whimsical exaggeration: certainly from his youth he was bent upon making his resources in character and intellect count for the most in achievement. In the fall of 1835, at the age of nineteen, he matriculated in the medical department of Transylvania College, at Lexington. He was not in attendance the following year, but reappeared in the autumn of 1837 and completed his course on March 9, 1838. In the meantime he had taken up residence at Barbourville, in the hills of southeastern Kentucky, on the turnpike leading down from Cumberland Gap. The town was a county seat, the center of a self-contained community which raised live-stock, distilled whiskey, held few slaves and voted Whig.

On May 27, 1837 Miller participated in the organization of the Barbourville Debating Society, and thereafter was its foremost speaker. Every Saturday "at early candle light" a dozen or so of the young men of the town would meet at the court house and debate some question of current interest.[3] This method of relating himself to great public issues gave Miller an outlet far more satisfying than the practice of medical pseudo-science. His course of study had been largely empirical, and included such subjects as phrenology. Law and statecraft, in marked contrast, must have appeared to Miller to be bottomed on the eternal verities. Surreptitiously he read law,

[2] Letter of Oct. 24, 1872.

[3] I have published portions of the society's journal in 17 *Miss. Valley Hist. Rev.* 595 *et seq.* (1931).

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and on March 22, 1847 he was admitted to the bar of the circuit court of Knox County.[4] In April 1844 he was sworn as justice of the peace, and took his seat as a member of the county court.[5] This gave scope for statecraft of a low order—caring for paupers, settling with toll-gate keepers, laying out new roads. He aspired unsuccessfully to a seat in the constitutional convention of 1849. The new constitution registered the triumph of the slave interests, while Miller felt an antipathy for slavery which dated back to the day when as a child he had seen his Negro "mammy" flogged. He determined to seek a more congenial home, and in 1850 took his wife and children to Keokuk, Iowa, and opened a law office.

In Iowa Miller came to be an important member of the bar. By 1855 he had a considerable practice before the state Supreme Court. He was interested in projects for building railroads and plank roads,[6] and beat the bushes in an unsuccessful attempt to carry the state for General Scott in 1852.[7] He was an original Republican, and in 1861 sought, without success, to be nominated for governor.[8] There was no false modesty about Miller. Conscious of his latent ability, he longed for a chance to wield public power. The great opportunity came when in 1862 two vacancies in the Supreme Court were to be filled. Miller's friends in Congress circulated a petition for his appointment,[9] and he went on to Washington to promote his own interests. On August 16 he was nominated and confirmed. He was then forty-six years old, a successfull small-town lawyer, and a member of the Republican state central committee.[10] Outside of Iowa he was unknown.[11]

[4] As appears on page 350 of order book G of that court. He was admitted on motion of Silas Woodson, a post-war governor of Missouri.

[5] As appears in the record books of the Knox County Court.

[6] [Keokuk] *Valley Whig and Keokuk Register*, Oct. 24, 1850; [Keokuk] *Des Moines Valley Whig*, Jan. 29 and June 24, 1852.

[7] *Des Moines Valley Whig*, Apr. 22, May 20, July 22, Oct. 14, 1852.

[8] Clark, *Samuel Jordan Kirkwood*, 197, 422.

[9] Brigham, *James Harlan*, 176; N. Y. *Daily Tribune*, July 18, 1862.

[10] Burlington *Daily Hawk-Eye*, July 3, 1862.

[11] As he himself remarked, 20 *Albany L. Journ.* 25.

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When Miller took his place on the bench at the December term following, he doubtless felt as did Lord Birkenhead when promoted to the woolsack: "I approach the discharge of the high duties that await me in a spirit of anxious solicitude; but not, believe me, in one of morbid self-distrust." [12] His predisposition toward Taney may well be imagined, and no doubt the chief justice felt a sincere relief when, at the close of Miller's first term, he observed that divergent opinions had led to no clash. Presently the renewal of the Court brought Miller into a more influential position. By 1870 he was reflecting that his life was like the Norway Maelstrom: yearly the course of events swept him more and more into the center of things.

> I have never as you know been an idle man. But as I find here year after year not only an increased docket, but an increasing demand upon me personally in view of my special position in the court, and of the grave and doubtful questions which I am called on to decide, and as I feel the increasing responsibility attached to *my opinions* and actions, certainly the current requires greater labor to keep in the safe way, and the circle *seems* to be narrowing as each year seems to grow shorter, until I too must go down to the last resting place of all men.
>
> I have been striving to keep the court in what seems to me the wise course. I have earnestly worked to make it a court of law, and of justice. I hope not altogether without success. There is not much talent in it. There is much prejudice, or rather preoccupation. There is much political feeling of which perhaps I have my share. A good man can do much good in the court. I hope I have done some good and not much ill.[13]

Some quantitative notion of the amount of Miller's judicial labors may be gathered from the table in the footnote.[14] The writer is fully conscious of the delusive exactness of such data. Yet a few observations seem warranted. First, the enormous increase in the work of the Court. Again, Miller is spoken of as a great dissenter, and the figures afford some idea of the truth of this impression. It will be seen how the ratio of disagreement falls off, which may in part be attributed to Miller's

[12] 10 *Canadian Bar Rev.* 71 (1932).

[13] Letter of Feb. 10, 1870.

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14

Years and Reporters	Decisions of the Court (Figures in italics refer to cases where U. S. Constitution was construed)				Where Miller Wrote Opinion			
	No. of Decisions	Miller for the prevailing opinion	Miller concurs	Miller dissents	No. of prevailing opinions by Miller	No. of dissents where Miller wrote opinion of the Court	Miller wrote concurring opinion	Miller wrote dissenting opinion
1862-66								
2 Bl.—3 Wall.....	240 *18*	227 *15*	1 *0*	12 *3* 5%	34 *4*	4 *1*	1 *0*	5 *1*
1866-70								
4 Wall.—10 Wall. 308	506 *56*	475 *46*	3 *1*	28 *9* 5.5%	66 *12*	6 *5*	1 *0*	12 *3*
1870-74								
10 Wall. 308—20 Wall. 375	671 *66*	640 *58*	4 *1*	27 *7* 4%	90 *15*	19 *8*	1 *0*	7 *3*
1874-78								
20 Wall. 375—97 U. S. 360 ...	855 *65*	824 *62*	0 *0*	31 *3* 3.6%	91 *14*	14 *1*	0 *0*	10 *2*
1878-82								
97 U. S. 361—105 U. S.....	850 *60*	822 *57*	1 *1*	27 *2* 3.2%	107 *13*	8 *2*	1 *1*	15 *2*
1882-86								
106 U. S.—118 U. S. 541	1078 *94*	1057 *91*	2 *2*	19 *1* 1.8%	99 *19*	12 *6*	1 *1*	10 *0*
1886-90								
118 U. S. 541—136 U. S.	1124* *119*	1101 *114*	1 *1*	16 *4* 1.4%	120 *18*	15 *8*	2 *2*	7 *3*
Totals	5324* *478*	5146 *443*	12 *6*	160 *29* 3%	607 *95*	78 *31*	7 *4*	66 *14*

* Including 6 decisions announced as "by a divided court".

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dominance over his brethren, though it is equally true that in later years he tended to remain silent where dissent was futile.[15] Finally, it will be observed that Miller was assigned far more than his normal share of opinions in cases where the Constitution was called in question. He took pride in saying, what was doubtless true, that no previous judge had written so many constitutional opinions.

II

In Justice Miller's opinions certain characteristics appear recurrently. He was no egalitarian in regard to judicial opinion. "Authorities" were more or less persuasive according to the character of their source.[16] Thus he would note that a principle was stated "by Chancellor Kent, with his usual force and clearness",[17] or by "the Supreme Court of Massachusetts —a court whose opinions are always entitled to great consideration",[18] or by some other "court of high character". "Tell me what *you* think about this, for I esteem your opinion of much more value than that of the authority cited"—to counsel who had relied upon some ill-considered decision.[19] In his self-reliance he could be "entirely satisfied" with a decision which, as he remarked, took the profession by surprise and overruled the opinion of Chancellor Kent and the Supreme Court of Massachusetts.[20] In *Woodruff v. Parham*,[21] after exhibiting cogent reasons of policy why the Constitution should be given a certain construction, perhaps at variance with the opinions of Marshall and Taney, he adds complacently: "If we examine for a moment the results of the opposite doctrine, we shall be well satisfied with the wisdom of the Constitution as thus construed"—by himself. Miller always sought to make the law square with justice: "This is the honest and

[15] "I have grown more averse to dissents." Letter of May 1, 1871.

[16] *Cf.* Miller's lecture on "The Use and Value of Authorities", in C. N. Gregory, *Samuel Freeman Miller*, 123 *et seq.*; Letter on the "Weight of Authorities", 16 *Va. L. Journ.* 582 (1886).

[17] 100 U. S. at 642. [18] 3 Wall. at 341.

[19] Gregory, *op. cit.*, 133.

[20] Buck v. Colbath (1865), 3 Wall. 334, 341.

[21] (1868) 8 Wall. 123.

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fair view of the subject, and we think it conflicts with no rule of law";[22] "this is just and is sound policy";[23] "as I have had no opportunity to examine the authorities cited in the opinion, I can do no more than protest against the doctrine".[24] He disliked tergiversation, and was too candid to acquiesce when the Court reached a result which he approved by resorting to an invalid distinction.[25]

Justice Miller had no reticence in allowing his personal beliefs to appear in his opinions. Thus, for example, he shows his antipathy for the "gambling stockbroker of Wall Street" who "buys at twenty-five per cent of their value" municipal bonds of doubtful validity, and regrets that the decision of the majority will facilitate the operations of "rich corporations . . . or rich men, making contracts with the legislatures . . . with such appliances as it is known they do use" in effecting their anti-social ends.[26] Elsewhere he speaks of a decision of his brethren as arrived at by "a stretch of fancy, only to be indulged in railroad bond cases".[27] Miller felt a deep revulsion for what Professer Parrington dubbed "the great American barbecue"—the spectacle of government providing a feast of grants, franchises and tax exemptions for fat exploiters of the natural and social resources. In the greater freedom of private correspondence he wrote:

> I have met with but few things of a character affecting the public good of the whole country that has shaken my faith in human nature as much as the united vigorous, and selfish effort of the capitalists,—the class of men who as a distinct class are but recently known in this country—I mean those who live solely by interest and dividends. Prior to the late war they were not numerous. They had no interest separate from the balance of the community, because they could lend their money

[22] 97 U. S. at 389.

[23] 135 U. S. at 301.

[24] 105 U. S. at 538.

[25] *Cf.* Thorington v. Smith (1868) 8 Wall. 1 with Hanauer v. Woodruff (1872) 15 Wall. 449; also U. S. v. Dashiel (1866) 4 Wall. 182 with U. S. v. Thomas (1872) 15 Wall. 377.

[26] Gelpcke v. Dubuque (1863) 1 Wall. 175, 214.

[27] Meyer v. Muscatine (1863) 1 Wall. 384, 397.

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safely and at high rates of interest. But one of the effects of the war was greatly to reduce the rate of interest by reason of the great increase in the quantity of the circulating medium. Another was by the creation of a national funded debt, exempt from taxation, to provide a means for the investment of surplus capital. This resource for investment was quadrupled by the bonds issued by the States, by municipal corporations, and by Rail Road companies. The result has been the gradual formation of [a] new kind of wealth in this country, the income of which is the coupons of interest and stock dividends, and of a class whose only interest or stake in the country is the ownership of these bonds and stocks. They engage in no commerce, no trade, no manufactures, no agriculture. *They produce nothing.*[28]

III

The greatest constitutional questions arising in Justice Miller's earlier years on the bench were those of war and reconstruction. No one upheld the authority of the nation more vigorously than he. In the Prize Cases [29] he was of the majority who held that the president might institute a blockade without awaiting the action of Congress. In *ex parte Milligan* [30] he was of the minority of four, concurring, who argued that Congress might constitutionally have established martial rule in Indiana. In *Miller v. United States* [31] he was with the majority in holding that Congress in confiscating the property of rebels was acting *jure belli* and was not limited by the bill of rights. And in another confiscation case [32] he rejects the doctrine "long inculcated, that the Federal Government, however strong in a conflict with a foreign foe, lies manacled by the Constitution and helpless at the feet of a domestic enemy". Field and Clifford, dissenting, argued that the Confiscation Act should be strictly construed. Not so Miller, who would construe the Act by "reasonable and sound rules . . ., and not by a system . . . so captious, so narrow, so difficult to understand or to execute, as to amount to a nullification of the

[28] Letter of Apr. 28, 1878.
[29] (1863) 2 Bl. 635.
[30] (1866) 4 Wall. 2.
[31] (1870) 11 Wall. 268.
[32] Tyler v. Defrees (1870) 11 Wall. 331.

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statute". In *Thorington v. Smith* [33] the Court enforced a contract made in the usual course of business, wherein Confederate currency was to have been the consideration. Miller shrank from any decision which might serve as a signpost to future rebellion, and assented to the judgment "with much reluctance, solely on the ground that such a principle was necessary to prevent the grossest injustice".[34]

Miller gave a characteristic response to the test oath cases.[35] When the constitutionality of a state and of a federal test oath was first considered by the Court, four judges thought the act good, four bad.

> But there was one judge, who said that if a vote was taken he should sustain the congressional oath, but should hold the Missouri oath which is almost identical void as in conflict with the federal Constitition! He made an earnest effort to have the vote taken on the latter proposition, but insisted on postponement in the former.
>
> What a judge will do next winter who could come to such conclusions and who could desire such action as he desired of course no one can tell from any thing he then said. This is of course strictly confidential.[36]

After hearing further argument a majority of five, through Justice Field, held both statutes invalid as *ex post facto* and as bills of attainder. Miller wrote a dissenting opinion in which Chase, Swayne and Davis concurred:

> The right to practice law in the courts as a profession, is a privilege granted by law, under such limitations or conditions in

[33] (1868) 8 Wall. 1.

[34] As he relates in Hanauer v. Woodruff (1872) 15 Wall. 449.

[35] Cummings v. Mo. (1867) 4 Wall. 277; Ex parte Garland (1867) 4 Wall. 333.

[36] Letter of July 31, 1866. Reverdy Johnson, who with David Dudley Field (Justice Field's elder brother) had been of counsel for Cummings, reported during the summer that a Justice had told him the Missouri test oath would be held unconstitutional. This was used against the Republicans in an election in Missouri, and Miller appealed to Chase, urging the latter to communicate a denial to some Republican leader. Miller to Chase, June 5, 1866, quoted by Swisher, *Stephen J. Field*, 142 *et seq.*

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> each state or government as the law making power may prescribe. . . . I venture to affirm, that if all the members of the legal profession in the states lately in insurrection had possessed the qualification of a loyal and faithful allegiance to the government, we should have been spared the horrors of that Rebellion. If, then, this qualification be so essential in a lawyer, it cannot be denied that the statute under consideration was eminently calculated to secure that result.

After arguing that this should be viewed as a not unreasonable regulation of a public calling, and that the test oath is in no proper sense a punishment, he asks:

> Where, then, is this *ex post facto* law which tries and punishes a man for a crime committed before it was passed? It can only be found in those elastic rules of construction which cramp the powers of the Federal government when they are to be exercised in certain directions, and enlarge them when they are to be exercised in others. No more striking example of this could be given than the cases before us, in one of which the Constitution of the United States is held to confer no powers on Congress to prevent traitors practising in her courts, while in the other it is held to confer power on this court to nullify a provision of the Constitution of the State of Missouri, relating to a qualification required of ministers of religion.

From his correspondence it is clear that Miller was no vindictive Radical; but still the taint of treason was not to be wiped away with a deprecatory gesture. On December 8, 1866, he confided to his rebel brother-in-law how the test oath cases had been decided in consultation, and added:

> I have felt bound by my clear convictions of law thus to vote but am not sorry that the result is adverse to my opinion, on your account and generally because I think the requirement unnecessarily harsh at present.

With what undeviating pertinacity Justice Miller supported the constitutionality of the Legal Tender Act until his view became the law is well known.[37] Dissenting alone, he argued

[37] Warren, *Supreme Court in U. S. History*, ch. 31.

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that the statute was applicable even where the debt was specifically to be paid in "gold and silver coin".[38] Then in *Hepburn v. Griswold*,[39] speaking for himself and Justices Swayne and Davis, he develops the case for an implied power to do that without which the war could not have been won. Had the drastic step not been taken, "the national government would have perished, and, with it, the Constitution which we are now called upon to construe with such nice and critical accuracy. . . . Certainly it seems to the best judgment that I can bring to bear upon the subject that this law was a necessity in the most stringent sense in which that word can be used." Addressing himself to the Chief Justice's deductions from the *spirit* of the Constitution, he replied:

> The whole argument of the injustice of the law—an injustice which, if it ever existed, will be repeated by now holding it wholly void; and of its opposition to the spirit of the Constitution, it is too abstract and intangible for application to courts of justice, and is, above all, dangerous as a ground on which to declare the legislation of Congress void by the decision of a court. It would authorize this court to enforce theoretical views of the genius of the government, or vague notions of the spirit of the Constitution and of abstract justice, by declaring void laws which did not square with those views. It substitutes our ideas of policy for judicial construction, an undefined code of ethics for the Constitution, and a court of justice for the National Legislature.

With the appointment of Justices Strong and Bradley the former minority gained the upper hand. When the Attorney General asked that another legal tender case be called up, and that the question of constitutionality be reargued, the Chief Justice insisted that *Hepburn v. Griswold* had settled the question. Miller protested that no such order or agreement had been made, and persisted until he won his point—with the result indicated in the following letter:

[38] Bronson v. Rodes (1869) 7 Wall. 229.

[39] (1870) 8 Wall. 603.

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> We have had a desperate struggle in the secret conference of the court for three weeks over two cases [40] involving the legal tender question. The Chief Justice has resorted to all the stratagems of the lowest political trickery to prevent their being heard, and the fight has been bitter in the conference room. Finally the new judges and the minority in Hepburn v. Griswold having withstood all assaults public and private, when the cases were called for arguments yesterday, the Appellants dismissed their appeal. No doubt they had been paid to do it as their claims were not large and a decision in their favour hardly probable.
>
> The excitement has nearly used me up. It has been fearful; and my own position as leader in marshalling my forces, and keeping up their courage, against a domineering Chief, and a party in court who have been accustomed to carry every thing their own way, has been such a strain on my brain and nervous system as I never wish to encounter again.[41]

The case being therefore dismissed on the appellants' motion, it was not until *Knox v. Lee* [42] a year later that the Legal Tender Act was finally upheld.

IV

When the decision of the Slaughter-House Cases [43] made it necessary for the Court to give a construction to the Fourteenth Amendment a cleavage developed which has persisted ever since. The minority of four justices interpreted the "privileges and immunities of citizens of the United States" as including "the sacred and imprescriptible rights of man". The Amendment "was intended to give practical effect to the declaration of 1776 of inalienable rights, rights which are the gift of the Creator; which the law does not confer, but only recognizes". Henceforth the Supreme Court was charged with a mission to declare and protect these transcendental rights.

[40] Latham v. U. S.; Deming v. U. S., 9 Wall. 145, 146, of April 20, 1870.

[41] Letter of Apr. 21, 1870. See *A statement of facts relating to the order of the Supreme Court of the United States for a reargument of the Legal Tender Question, in April, 1870*, written by Miller and printed in Charles Bradley (ed.), *Misc. Writings of the late Hon. Joseph P. Bradley*, 61 *et seq.*

[42] (1871) 12 Wall. 457.

[43] (1873) 16 Wall. 36.

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Justice Miller and the other justices who constituted the majority felt called to no such pontifical function. Rather would they start from the premise that this is a federal union, wherein the balance between state and nation should be preserved with an even hand. In his opinion Miller makes a fundamental distinction between the privileges and immunities of citizens *of the United States* as such, and that larger body of rights, "whatever they may be", which must find their definition and their protection in the institutions of the several states.

While the line of cleavage in the Court was not partisan, it has been suggested to the writer that perhaps Miller was impelled by a desire to uphold the legislation of carpet-bag governments. But in his private correspondence he shows himself almost as critical of the corruption and ignorance of Southern Republicans as he was of Democratic intransigence. While one must hesitate to attribute to Justice Miller all of Justice Holmes' convictions about the unwisdom of attempting, by judicial omniscience, to save society from its own mistakes, yet it is clear that they had the same conviction of the necessity of allowing "some play for the joints of the machine".[44]

Those "natural rights" which Miller pruned off the privileges and immunities clause have since been grafted on to the due process clause, where they flourish in riotous profusion. During his lifetime Miller resisted such a growth. In *Davidson v. New Orleans*[45] he indicates the point of view from which the due process clause should be approached.[46] It is construed to extend not only to executive and judicial procedure, but also to apply

> where the invasion of private rights is effected under the forms of state legislation. It seems to us that a statute which declared in terms, and without more, that the full and exclusive title of a described piece of land, which is now in A, shall be and is hereby vested in B, would, if effectual, deprive A of his

[44] *Cf.* Davidson v. New Orleans (1877) 96 U. S. 97; Kelly v. Pittsburgh (1881) 104 U. S. 78; Memphis Gas Co. v. Shelby Co. (1883) 109 U. S. 398.

[45] *Supra.*

[46] *Cf.* Willoughby, *Constitutional Law*, 2d ed., III, 1696.

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property without due process of law, within the meaning of the constitutional provision.

But it is pointed out that the Fourteenth Amendment is not a means of "bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State Court of the justice of the decision against him, and of the merits of the legislation on which such decision may be founded." A comparison of the due process clauses in the Fifth and Fourteenth Amendments indicates that the latter does not cover all the ground of the federal bill of rights. But exact definition of due process seems impossible as well as unwise, and the elaboration of its meaning is remitted to "the gradual process of judicial inclusion and exclusion".

This, it is submitted, was good sense, though the minutely critical may regret that in his historical discussion Miller fell into the anachronism of speaking of Parliament as an institution with which the barons were well acquainted in 1215. Miller's scholarship was home-made, and his brother Gray used to lament that a mind of such power and aptitude had not been duly grounded in the law.[47] It was rightly said that Miller was a man of wisdom rather than of knowledge, and to compare him with Gray suggests the contrast between Marshall and Story.[48]

V

Justice Miller was not always such a positivist in rejecting considerations arising from "the spirit of the Constitution and of abstract justice" as his dissent in *Hepburn v. Griswold* would suggest. *Loan Association v. Topeka*[49] was an action on interest coupons attached to municipal bonds, and was brought in the federal courts by reason of diversity of citizenship. The bonds had been issued under statutory authority to

[47] Gregory, *Miller*, 19. Justice Miller had decided views on what should be the aim of education. He regretted that in the older American colleges "the student who takes the old regular Classical Course is a patrician, while the man who seeks the knowledge of *things* instead of the knowledge of *words* is a pleb." Letter of Sept. 22, 1878.

[48] 24 *Am. L. Rev.* 997.

[49] (1875) 20 Wall. 655.

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induce an iron company to come to Topeka. In holding the legislation *ultra vires,* Miller said:

> The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.
>
> There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.

He goes on to argue that freedom from taxation for other than a public purpose is one of those "rights beyond the control of the State". It was not thought necessary to find any constitutional peg on which to hang this opinion, and writers on "natural law" have rightly regarded it as one of the most significant expressions of the concept of inherent limitations upon governmental powers.[50]

This leads to a consideration of Miller's attitude toward the taxing power. In their zeal to encourage railroads and other agencies of civilization in the new West, states and municipalities had been prodigal in offering tax-exemption and in voting bonds. As grangers became disillusioned, efforts were made to avoid the obligations thus improvidently assumed. Under a variety of forms recurred the fundamental question—what protection did the Constitution throw about such ill-considered transactions? From the first Miller sought, without success, to commit the Court to the view that the power to tax, like the "police power", is inalienable even by express grant.[51] He pointed out that the result of the prevailing opinion "under

[50] Haines, *The Revival of Natural Law Concepts,* 130, 170; Wright, *American Interpretations of Natural Law,* 300. Prof. Haines points out, pp. 124 *et seq.,* that Judge Cooley and Judge Dillon had already developed the idea of inherent limitations on the taxing power. Dillon and Miller were close friends. Prof. Corwin speaks of the doctrine as being a constitutional waif until it was gathered under the hospitable roof of the due process clause. 74 *U. Pa. L. Rev.* 639, 669.

[51] *Cf.* N. J. v. Yard (1877) 95 U. S. 104, at 114; Miller, *Lectures on the Constitution,* 559 *et seq.*

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the growing tendency to special and partial legislation, would be, to exempt the rich from taxation, and cast all the burden of the support of government, and the payment of its debts, on those who are too poor or too honest to purchase such immunity".[52]

Most of the controversies between municipal corporations and the holders of bonds granted to aid railroads were fought out on a different terrain. *Gelpcke v. Dubuque*[53] is the leading case. The circumstances are familiar: the Iowa Supreme Court, overruling previous decisions by a divided court, finally declared that the municipal corporation had acted *ultra vires* in issuing bonds for the purchase of railroad stock. Would the federal courts, where the same issue was presented in cases between citizens of different states, be bound by this latest exposition of the constitutional law of Iowa? No, said Justice Swayne, for the Court, adopting Taney's dictum that

> "the sound and true rule is, that if the contract, when made, was valid by the laws of the State as then expounded by all departments of the government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of legislation, or decision of its courts altering the construction of the law." Ohio Life & Trust Co. v. Debolt, 16 How. 432.
>
> The same principle applies where there is a change of judicial decision as to the constitutional power of the Legislature to enact the law. . . .
>
> We shall never immolate truth, justice, and the law, because a state tribunal has erected the altar and decreed the sacrifice.[54]

In an able dissenting opinion, Justice Miller protested that "some fancied duty . . . to enforce contracts, over and beyond that appertaining to other courts", had led the majority into a usurpation of power, "accompanied by language as unsuited to the dispassionate dignity of this court, as it is

[52] Dissenting, in Wash. Univ. v. Rouse (1869) 8 Wall. 439, 444.

[53] (1864) 1 Wall. 175.

[54] It will be noted that the majority did not claim that the Court should exercise an independent judgment. The previous rule was to be upheld, right or wrong.

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disrespectful to another court of at least concurrent jurisdiction over the matter in question".

> What this may lead to it is not possible now to foresee, nor do I wish to point out the field of judicial conflicts, which may never occur, but which if they shall occur, will weigh heavily on that court which should have yielded to the other, but did not.

These conflicts did not fail to appear. In *Riggs v. Johnson County*,[55] in order to give effect to a judgment recovered by a foreign bondholder, the Court went so far as to uphold the issuance of a writ of mandamus to compel county officers to levy a tax which a state court had perpetually enjoined them from levying. Then in *Butz v. Muscatine*[56] the Court went still farther and held that notwithstanding an unbroken construction in Iowa courts to the contrary, it would so construe a state statute limiting the amount of taxes annually levied as not to prevent the levy of whatever additional taxes might be necessary to satisfy judgments recovered in federal courts on unpaid municipal bonds.

As the majority went on and on in these municipal bond cases, the doctrine was finally stated that

> Where legislative authority has been given to a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some condition precedent such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made in bonds issued by them and held by a *bona fide* purchaser, is conclusion of the fact, and binding upon the municipality.[57]

A doctrine which made the taxpayer the insurer against official error, carelessness or corruption was, in Miller's opinion,

[55] (1867) 6 Wall. 166. Miller dissenting.

[56] (1869) 8 Wall. 575. Miller dissenting.

[57] Humboldt Twsp. v. Long (1875) 92 U. S. 642. Miller (and Davis and Field) dissenting.

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" worthy the admiration of all who wish to profit by the frauds of municipal officers". " I know that in some of the cases tried before me last summer in Kansas it was shown that the first and only issue of such bonds exceeded in amount the entire value of the taxable property of the town."

Miller's dissent in the Gelpcke case was based not only on a view of the abstract question, but also on the practical consideration that it seemed unwise to extend such complete protection to adventurers in their dealings with municipalities. Before he went on the bench Miller had been retained to defend some of these bond cases in the Supreme Court,[58] and in 1868 he devoted a good deal of energy to an effort to compromise the debt burden which, he felt, retarded the progress of his home town.[59] To his brother-in-law who was coming to Washington to argue a city bond case,[60] Miller wrote:

> On what I consider the strongest point in your case, the limitation of the power of the city to issue the bonds or to contract the debt, no member of the court hesitates a moment except Field and myself. And the feeling which has [two words illegible] the court against all municipalities who contract any asserted obligation in them amounts to a mania. If I were a practicing lawyer today, my self respect, knowing what I do of the force of that feeling, would forbid me to argue in this court any case whatever against the validity of a contract with a county, city or town under any circumstances whatever. It is the most painful matter connected with my judicial life that [I] am compelled to take part in a farce whose result is invariably the same, namely to give more to those who have already, and to take away from those who have little, the little that they have.[61]

When the Court in conference decided against the city, Miller wrote:

> Our court or a majority of it are, if not monomaniacs, as much bigots and fanatics on that subject as is the most unhesitating

[58] Letter of Nov. 11, 1860.

[59] Letter of Aug. 27, 1868.

[60] Hitchcock v. Galveston (1878) 96 U. S. 341.

[61] Letter of Jan. 13, 1878.

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> Mahemodan in regard to his religion. In four cases out of five the case is decided when it is seen by the pleadings that it is a suit to enforce a contract against a city, or town, or a county. If there is a written instrument its validity is a for[e]-gone conclusion.[62]

This is not the place to explore the borderland between state and federal decisions further than is indispensable to understanding Justice Miller's point of view.[63] In *Swift v. Tyson* [64] Justice Story examined the question how far the federal courts, in cases before them *ratione personae,* would follow the law as expounded in state courts. The Judiciary Act of 1789, § 34, provided that " the laws of the several States " should be " regarded as rules of decision " by the federal courts. Story construes " laws " to mean only statutes: " In the ordinary use of language it will hardly be contended that the decisions of courts constitute laws. They are, at most, only evidences of what the laws are, and are not themselves laws." Whence a distinction: the federal court would follow the decisions of the courts of a state as to its " positive statutes " (and in cases of land titles, etc.), but would exercise an independent judgment on " questions of a more general nature ", especially of " general commercial law ". Story concludes with a flourish from Cicero that the law is not one thing at Rome and another at Athens, but the same at all times and among all peoples.

Thus the Court adopted the view—the fallacy as Mr. Justice Holmes has pronounced it—that there is some " august corpus ", some " transcendental body of law outside of any particular state but obligatory within it unless and until changed by statute ".[65] Now the majority in the Gelpcke case aban-

[62] Letter of Feb. 3, 1878.

[63] On the problem raised by Gelpcke v. Dubuque, *cf.* O. W. Holmes, in Kent's *Commentaries,* 12th ed., 1419 n. 1; Gray, *The Nature and Sources of Law,* 2d ed., ch. 10; J. B. Thayer, 4 *Harv. L. Rev.* 311; W. H. Rand, Jr., 8 *ibid.* 328; Larremore, 22 *ibid.* 182; 9 *Am. L. Rev.* 381; 29 *Cent. L. Journ.* 465, 485.

[64] (1842) 16 Pet. 1.

[65] Dissenting in Black and W. T. and T. Co. v. B. and Y. T. and T. Co. (1928) 276 U. S. 518; similarly in Muhlker v. N. Y. and H. R. Co. (1905) 197 U. S. 544, diss. at 571; Kuhn v. Fairmont Coal Co. (1910) 215 U. S. 349, diss. at 370.

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doned Story's declaratory theory of judicial decision, and adopted the view that the courts make the law, and that for the Supreme Court of Iowa to reverse itself was tantamount under the circumstances to the state passing a law impairing the obligation of a contract.[66]

What was the rational basis of Miller's disagreement with the long line of cases beginning with *Gelpcke v. Dubuque*? There is, first, the position of the rigorous positivist who would resist all attempts to bring down law out of the ethereal blue. From this point of view *Swift v. Tyson* and *Gelpcke v. Dwbuque* are equally obnoxious, being the judicial imposition of notions of what the law ought to be, and the disharmony of their doctrines is explained by the fact that each is a rationalization, a device for extending federal judicial review.

This was not Justice Miller's position. His dissent in the municipal bond cases rested on the narrower ground that a proper relation between the federal and state courts required that the former bow to the latter as to the construction of the state constitution and laws.[67] Where, on the other hand, it was a question of common law, Miller did not regard it as a usurpation of judicial power for the Supreme Court to impose its will upon a state court.[68]

VI

Other leading constitutional opinions by Justice Miller must be passed in only brief review. *Kilbourn v. Thompson* [69] held

[66] *Cf.* Gray, *supra*, and Rand, *supra*. Not that the new decision was recognized by the Court as inconsistent with Swift v. Tyson: on the contrary the two decisions were used together where appropriate to protect the holders of municipal bonds. *Cf.* Marshall Co. v. Schenck (1867) 5 Wall. 772; Pana v. Bowler (1883) 77 U. S. 529.

[67] If no clash with state courts was precipitated, Miller was ready to invoke "principles of general constitutional law" to strike down state legislation. Davidson v. New Orleans, *supra*, explaining the ground for the decision in Loan Assn. v. Topeka, *supra*.

[68] Thus in Yates v. Milwaukee (1870) 10 Wall. 497, 506, overruling the view of the Supreme Court of Wisconsin, he says: "This [question] does not depend upon State statute or local law. The law which governs the case is the common law, on which this court has never acknowledged the right of the State courts to control our decisions, except, perhaps in a class of cases where the State courts have established, by repeated decisions, a rule of property in regard to land titles peculiar to the State."

[69] (1880) 103 U. S. 168.

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that the House of Representatives was without power to punish a recusant witness whose testimony had been sought in an investigation of a real estate pool in which a bankrupt debtor of the United States was believed to be interested. The parliamentary precedents were rejected as irrelevant on the ground that Parliament was historically a court and thus derived its power to punish for contempt. One of the chief merits of the American system of government was the separation of powers. A "general power of making inquiry into the private affairs of the citizen" does not pertain to either House of Congress: the power to inquire is limited to matters of which the House "has jurisdiction". Though the opinion stops short of denying a power to inquire as a preliminary to legislation, "there are expressions . . . which, separately considered, might bear such an interpretation".[70]

The opinion has been criticized on several grounds, and cannot be said to have stood the test of time.[71] Justice Miller's remarks on the historical relation between the judicial powers of the Houses of Parliament and the punishment for contempt were very probably wrong. His sharp differentiation of judicial from legislative power seems doctrinaire and unrealistic. He shows himself zealous to resolve any doubt against the good faith of the House. One may share his regret at the low standard of legislative performance without concluding that public policy requires a narrow construction of inquistorial powers. Perhaps intellectual muscularity cannot be developed in a constitutional straight-jacket.

It is interesting to learn from Miller's correspondence that a majority of the Court was prepared to go so far as to deny a power to punish as an aid to the legislative function, and to find a more specific statement of the Justice's dislike for legislative fishing expeditions.[72]

[70] Van Devanter, J., in McGrain v. Daugherty (1927) 273 U. S. 135, 171.

[71] McGrain v. Daugherty, *supra;* Landis, 40 *Harv. L. Rev.* 153; Potts, 74 *U. Pa. L. Rev.* 691, 780; Wigmore, 19 *Ill. L. Rev.* 452; Dimock, 47 *J. H. U. Studies;* Galloway, 21 *Am. Pol. Sci. Rev.* 47.

[72] "I think if you had had the opinion [in Kilbourn v. Thompson] before you so as to examine it again you would have seen that there was a careful and avowed avoidance of the ground which you have discussed, namely the

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Crandall v. Nevada [73] is a case handled with the bold method of treatment where Miller was most himself. May a state impose a tax on persons leaving its borders? The Court, through Miller, answers in the negative; but the decision does

power of one house to compel by punishment witnesses to appear and answer questions which may throw light on the legislative duties of those bodies. The reason of this was that on that point the court was not united, and dealing as we were with the asserted privileges of one of the most important coordinate branches of the government, it was very desirable to have unanimity in the court, as well as to decide no more than what was necessary. It was partly due to my conservative habit of deciding no more than is necessary in any case, that I was selected to write the opinion.

"The majority of the court however was prepared to decide that no power to punish a witness for contempt in any other case than those which I specifically enumerate in the opinion exists in either house separately. It is explicitly decided in the Privy Council cases which I cited, that such a power is not incidental or necessary to the discharge of duties exclusively legislative, and higher authority cannot be found. This was my own opinion. This, however, is wholly apart from the power of Congress to pass statutes giving such power, and providing for such punishment, and it is much more conformable to our notions of personal rights that such a power should rest on a law enacted by the legislative authority, than on the loose notions [of] one branch of the legislature of its exclusive and irresponsible power in the matter.

"I might and perhaps ought to rest what I have to say on that part of your letter here. But I am free to say that I hold no such opinion as you suggest as to legislative powers of investigation. Not even as to state legislatures, whose powers are to be construed on a much more liberal principle than those of Congress. I think the public has been much abused, the time of legislative bodies uselessly consumed and rights of the citizens ruthlessly invaded under the now familiar pretext of legislative investigation and that it is time that it was understood that courts and grand juries are the only inquisitions into crime in this country. I do not recognize the doctrine that Congress is the *grand inquest* of the nation, or has any such function to perform, nor that it can by the name of a report slander the citizen so as to protect the newspaper which publishes such slander. [*Cf.* Stockdale v. Hansard (1839) 9 A. & E. 1; 3 Vict. c. 9.] If the whole body cannot do this much less can one house do it. . . .

"As regards needed information on subjects purely legislative no doubt committees can be raised to inquire and report, money can be used to pay for such information and laws may be made to compel reluctant witnesses to give it under proper guaranty of their personal rights. This is sufficient, without subjecting a witness to the unlimited power of a legislative committee or a single branch of the legislative body." Letter of Mar. 20, 1881.

Miller believed "that the House is gradually absorbing all the powers of the government." Letter of Nov. 19, 1876. *Cf.* his address at Philadelphia in 1887. Gregory, *op. cit.*, 107.

[73] (1868) 6 Wall. 35.

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not rest on the obvious consideration that it was a regulation of interstate commerce. "The people of the United States constitute one nation. They have a government in which all of them are deeply interested." This government has a capital to which every citizen may resort, while the government may summon to this point any or all of its citizens to aid in its services, as well as march armies through any state. So the tax was obnoxious to this general principle.

Conceived in the same mold was the opinion in the matter of Neagle.[74] The petitioner, a deputy United States marshal, was in the custody of the state of California charged with the murder of Turner. The killing had taken place when Turner assaulted Justice Field, whom Neagle had been detailed to guard during his progress through his circuit. Under the statute the writ of habeas corpus was to issue where the petitioner was "in custody for an act done or omitted in pursuance of a law of the United States". Was Neagle within the statute? In an opinion which marches boldly to its conclusion, Miller says:

> In the view we take of the Constitution of the United States, any obligation fairly and properly inferable from that instrument, or any duty of the marshal to be derived from the general scope of his duties under the laws of the United States, is "a law" within the meaning of this phrase.

Having deduced from general reasoning the power to grant the writ, Miller goes on to show how the same result might have been reached on the basis of positive law.

United States v. Lee[75] is another opinion rendered in the grand manner. As everyone knows, it holds that an action of ejectment can be maintained against an officer in possession under claim of title in the United States, where the United States is not a party and has not consented to the suit. After holding the English cases on the immunity of the Crown to be inapplicable, and the American precedents to uphold the maintenance of the action, Justice Miller examines the question "upon principle, and apart from the authority of adjudged

[74] (1890) 135 U. S. 1. [75] (1882) 106 U. S. 196.

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cases", and decides it from the viewpoint of American political philosophy.[76]

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it.

Where the moral issue was clear Miller was a bold and courageous magistrate, and the researches of Justice Gray (dissenting) into the extent of the royal prerogative since the middle ages left Miller unmoved.

There was, however, one class of case which Miller would approach with hair-splitting nicety. He did not believe in capital punishment,[77] and was quite willing to find constitutional grounds to save the life of a murderer.[78]

In cases involving the question whether a state might deny to a foreign corporation admitted to do business therein the right to resort to the federal courts, Miller was always on the side denying such right.[79] This view of the matter has finally become the law of the Court.[80] He has also received posthumous vindication for the view that federal bonds owned by a domestic corporation may not be included in the measure of a state tax on the corporate franchise.[81] He held as unconstitutional state taxes which were measured in part by the receipts from interstate commerce, and before his death had brought the Court to share his view.[82]

[76] Willoughby, *op. cit.*, III, 1416.

[77] U. S. v. Gleason (1867) 1 Wollw. 128.

[78] Medley, Petitioner (1890) 134 U. S. 160; Kring v. Mo. (1882) 107 U. S. 221.

[79] Home Ins. Co. v. Morse (1874) 20 Wall. 445; dissenting in Doyle v. Cont. Ins. Co. (1877) 94 U. S. 535; Barron v. Burnside (1887) 121 U. S. 186.

[80] Terral v. Burke Constr. Co. (1922) 257 U. S. 529.

[81] Dissenting in Society v. Coite (1867) 6 Wall. 594, Provident Inst. v. Mass. (1867) 6 Wall. 611, Hamilton Co. v. Mass. (1867) 6 Wall. 632, and Home Ins. Co. v. N. Y. (1890) 134 U. S. 594; Macallen Co. v. Mass. (1929) 279 U. S. 620.

[82] Dissenting in State Tax on Ry. Gross Receipts (1872) 15 Wall. 284; Fargo v. Mich. (1887) 121 U. S. 230; Phila. and So. S. S. Co. v. Penna. (1887) 122 U. S. 326; Ratterman v. West. U. Tel. Co. (1888) 127 U. S. 411; West. U. Tel. Co. v. Ala. (1889) 132 U. S. 472.

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VII

There must be an end to litigation, and Miller early insisted upon limiting the right of appeal. In the post-war press of business the Court could not keep up with its docket, while the necessity of going on circuit prevented lengthening the term at Washington. Miller's efforts to cover a circuit of seven states between spring and fall proved very fatiguing. He and Justice Field prepared what became the Act of April 10, 1869, creating the office of circuit judge. He urged further legislation to curtail the jurisdiction of the Supreme Court: resort from the territories and the District of Columbia should be limited as in cases from state courts; appeals in admiralty should be restricted and there should be no review on questions of fact in equity cases; the limit of appeal should be raised from $2000 to $5000.[83] In his zeal to see justice administered efficiently, Miller was disgusted by the unenlightened opposition which his bill encountered in the Senate Judiciary Committee, as the following letter shows:

> I note what you say . . . about the effect of my bill in leaving the people of the Southern States at the mercy of their district judges in finding of facts which is made conclusive. The same objection is urged here by Mr. Phillips and other lawyers interested in cases coming from that region. But I do not see how to avoid the difficulty. The one important feature on which all our court is agreed, and the only one which seems to be without objection in Congress is to relieve this court from that business. It is a necessity. The bill passed the House six weeks ago without material amendment. . . . It has hung fire in the Senate Judiciary Committee, a committee which is the damndest nuisance the Congress presents. Every man on it thinks himself the embodiment of constitutional wisdom and statesmanship, and each is jealous of the other. The only way they can ever report a bill is to permit some one to report with the understanding that each member shall vote and talk as he pleases when it comes up for action. I hardly hope for the passage of the bill in any shape satisfactory to me.

[83] 2 U. S. Jurist 1, 6 West. Jurist 49. In the 2d sess. 42d Cong. Butler of Mass introduced H. R. No. 891 to carry out this reform. *Cong. Globe*, 736, 813.

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> Nor do I now care much if it should fail. The docket of the present term has already reached 615 cases, and before it ends it will probably number near 800. For such a docket as this and such a vast increase as it indicates for the future, my bill is a very imperfect remedy. When the evil becomes of such a magnitude as to demand instant and efficient remedy, it will probably compel the adoption of the plan which has always had my preference, an intermediate appellate court in each circuit, or such a number of intermediate courts of appeal as may be found useful.[84]

Miller was strongly opposed to schemes for enlarging the Court and subdividing it into chambers: such a plan would "convert it into a large debating club, with hostile subdivisions, enfeeble its decisions, and soon destroy the esteem and veneration with which it is now regarded".[85] Some of his proposals were realized by the Act of February 16, 1875. But frustration had produced a disposition to "leave the responsibility where it belongs".[86] Thereafter the initiative was taken by others, and it was not until after Miller's death that the relief he sought was accomplished by the Circuit Courts of Appeal Act of 1891.[87]

So Miller went on circuit until the last, and indeed the collapse from which his death ensued was attributed to this work. He felt a keen pride in his ability to dispatch cases in the circuit court:

> I think I have a very rare faculty of inducing the bar to dispense with Rhetoric, with mere forms and to come directly and speedily to the points of which their cases rest if they have any merits at all and for a case which is all sham I have a quick eye and no toleration. In this manner I am able to dispatch business more rapidly than any judge I ever saw, and by making the pressure on the lawyers very gentle, but firm I find that whatever feeling of reluctance they have at the time, they are more than satisfied at the end of the term. I make it a point with whatever of rapidity we go over the case as a whole, to

[84] Letter of Mar. 9, 1872.

[85] Letter of Mar. 7, 1875.

[86] Letter of Oct. 24, 1872.

[87] *Cf.* Frankfurter and Landis, *The Business of the Supreme Court.*

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make them see, that as to the main points, the controlling questions, they have had a fair and full hearing and careful consideration by the Court, while I have but little patience with motions, points and questions which do not affect the merits of the case. I always get verdicts when I preside at a jury trial. In two very important cases in which juries had failed to agree one under Dillon and the other under Nelson I had verdicts in less than two hours. I never leave the jury in doubt as [to] what the law of the case is; and I have never had any trouble with lawyers about my bills of exception. If I decide the case as I generally do by instructions and rulings, I am consistently careful to give a bill of exceptions which shows what I have done, and oftener err in making it too favorable to the losing party than the other.

I take pleasure in the fact that while it is well known that I am a judge who takes responsibility boldly, I have never in twelve years service had the least trouble or ill feeling with a member of the bar so far as I know.[88]

Justice Miller seems to have had a sort of wolfish severity for all futility,[89] and his opinions are studded with pointed rebukes to counsel, clerks and inferior judges who imposed needless burdens upon the court.[90]

VIII

We seek to remake the world after our own mental images. When a man is justly confident in his intellectual processes, and ambitious to see his conclusions materialized, he is impatient with narrow-visioned obstruction. Such a man was Justice Miller. To bring about a right ordering of affairs amounted, with him, to a creative passion. The pattern he sought to establish has been sketched above. He opposed that extension of judicial protection to property interests which made possible the "era of acquisition and enjoyment". He sought to perfect

[88] Letter of July 1, 1874.

[89] Garland, in memorial Proceedings in the Supreme Court, p. 8; Woolworth, in memorial Proceedings in Circuit Court, Dist. of Nebr.; Geo. H. Williams, 8 *Yale L. Journ.* 296, 301; 25 *Chi. Leg. Notes* 52; 5 *Cent. L. Journ.* viii.

[90] 2 Bl. at 581; 2 Wall. at 339; 5 Wall. 419; 11 Wall. at 652; 12 Wall. at 261; 21 Wall. at 346; 91 U. S. at 603; 20 Fed. 712.

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the administration of justice, but lost patience with the paucity of achievement. He set his face against making the Fourteenth Amendment the basis for a *Naturrecht,* and while the contest still goes on, it is Justice Field whose spirit is in the ascendant.[90a] Miller had few of the philosophical resources of Justice Holmes, and found difficulty in adapting himself to frustration. But the generosity and sanity of his nature saved him from crabbed pettiness.[91] He wanted that modicum of increased authority that might have been his as Chief Justice, and was sorely tried by the narrowness and ineptitude which marked Grant's conduct in appointing Chase's successor.[92] By 1875 his reflections ran as follows:

> I confess that much as I like the law as a science, its practice as a pursuit, and the office of Judge as filling my ambition, I find its monotony begins to pall upon my taste and feelings.
>
> I have for thirteen years given all my energies and my intellect to the duties of my office, and to the effort to make and to keep our court what it should be. If I had been made Chief Justice I think I should never have tired in this effort. And I may be more affected by the fact that I was not than I am conscious of. But I certainly strove very hard last term to have things go right and to get all the good out of our Chief and my brethren that could be had.
>
> But I feel like taking it easy now. I cant make a silk purse out of a sows ear. I cant make a great Chief Justice out of a small man.[93] I cant make Clifford and Swayne, who are too old resign, nor keep the Chief Justice from giving them cases to write opinions in which their garrulity is often mixed with mischief. I cant hinder Davis from governing every act of his life by his hope of the Presidency, though I admit him to be as honest a man as I ever knew. But the best of us cannot prevent ardent wishes from coloring and warping our inner judgment.

[90a] This speaks from the summer of 1933.

[91] This is hardly the place to develop purely private virtues, but very much could be said on that score. *Cf.* Harlan, 3 *Cent. L. Journ.* 333.

[92] Letters of Oct. 18 and Nov. 6, 1870; July 27 and Dec. 10, 1873; Jan. 18 and July 1, 1874.

[93] Waite.

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> It is in vain to contend with judges who have been at the bar the advocates for forty years of rail road companies, and all the forms of associated capital, when they are called upon to decide cases where such interests are in contest. All their training, all their feelings are from the start in favor of those who need no such influence.
>
> I am losing interest in these matters. I will do my duty but will *fight* no more. I am perhaps beginning to experience that loss of interest in many things which is the natural result of years, and which wise men have felt the necessity [of] guarding against as age approaches.[94]

In a period when public virtue was no commonplace, Miller remained poor, honest, unwarped in sympathy or intellect. He lived as befitted his office, but his personal tastes were of the simplest. Congress, he felt, was generous in compensating the justices at $6000, later $10,000, per annum.[95] The Napoleonic maneuvers of railroad magnates might fascinate others, but on Miller's mind they produced only a sense of the hopelessness of protecting the public welfare.[96] He was only amused at a proposal that he resign and accept retainers from such interests.

He retained confidence in the Republican party, and if to some extent he bore with its excesses, it seems to have been from a continued sense of the awfulness of the treason with which many Democratic leaders were tarred. In his service on the Electoral Commission of 1876 he had no doubt of the proposition that in law the returns of the state boards must be accepted as conclusive. In 1883 Miller was informed through Blaine that the party leaders considered him the most appropriate compromise candidate for the presidency, and while he took the matter seriously, he did not lose his balance. The plan was to put him forward if Blaine's enemies deadlocked the convention—a contingency which never arose.[97]

[94] Letter of Dec. 5, 1875.

[95] 18 *Albany L. Journ.* 405.

[96] Undated letter, spring of 1870.

[97] Letters of May 9 and 27, 1883; June 15, 1884. By May 1884 Blaine had turned to General Sherman as a presidential possibility. 147 *No. Am. Rev.* 616, 621 (1888).

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Eventually the forces that had brought Justice Miller to power ran their course. Toward the end of his life new social problems were emerging on which he had no mandate. In 1886 occurred the Haymarket riots, and two years later when Miller delivered the commencement address at Iowa City he chose as his subject "The Conflict in this Country Between Socialism and Organized Society".[98] In an alarming discourse he bands together anarchists, nihilists, socialists, communists and single-taxers in indiscriminate condemnation. He warns his hearers of the foreign agitators who meet "at night and in secluded places" to plot the overthrow of the system of private property. He thinks that man is essentially selfish: even the artist and the parson work for the monetary reward. One wonders whether this was a passing mood, and how he would have reacted to legislation for the control of those forms of "property" which he had condemned in the days of *Gelpcke v. Dubuque.*

If one turns to the probate records of the Supreme Court of the District of Columbia[99] it will appear that Justice Miller died on October 13, 1890, intestate; that his cash assets consisted of the proceeds from the sale of his law books and the balance due on his salary; that when current bills were met there was no balance remaining. This is called to mind not to parade his personal affairs, but as a pointed refutation of the pessimism of his commencement address and of the thesis that only by unlimited monetary rewards can society get its work done. One recalls the twenty-eight years of unremitting toil, and his belief that "the few days left to me by nature are not worth coddling at the expense of public duty".[100] It serves as a datum to recall that wisdom and integrity may be joined to public power on terms of the highest advantage to society.

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[98] Gregory, *op. cit.*, App. C.

[99] No. 4135.

[100] Letter of June 29, 1879.

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CANADA, THE ANGLO-JAPANESE ALLIANCE AND THE WASHINGTON CONFERENCE[1]

PERHAPS the most flattering commentary on Canada's rise to nationhood has been the frequently repeated description of her as interpreter and intermediary between the United Kingdom and the United States. It has become something of a platitude in Canada and Great Britain and may become so in the United States, whereby no great harm will be done, because like most platitudes it contains a good deal of truth. The danger lies in exaggerating Canada's capacities in the way of influencing British and American behavior, because occasionally circumstances have allowed her to be more than an interpreter. In June and July 1921 the Right Hon. Arthur Meighen, Prime Minister of Canada, practically unassisted, checked his British and Dominion colleagues at an Imperial Conference in their determination to renew the Anglo-Japanese Alliance, thereby compelling cooler consideration of the issues and facilitating the movement which culminated in the Washington Conference. This dramatic incident, more spectacular than typical, was a landmark in several ways. Because it was speedily overshadowed by grander international negotiations, most observers have failed to detect that it was the turning-point in British Far Eastern policy as it has haltingly developed during the succeeding years. It was also the first vitally important incident in post-war Anglo-American relations. Owing to its nearness in time and because of the basic elements of several foreign policies which were involved, discussion of it cannot be documented in the usual manner, but enough information has become available since 1921 to permit an accurate, if in some ways limited, description. The account

[1] A paper read at the American Historical Association, Washington, 27 December, 1934.

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which follows contains no conscious suppositions except where they are clearly indicated.[2]

The Imperial Conference of 1921 [3] was the first since the Dominions had progressed from being informed about imperial foreign policy, as they were in 1912, to taking a share in framing it, as they did in the Imperial War Cabinet during the war and in the peace negotiations after it. Indeed, the first business of the Conference was to be to prepare for a constitutional conference at which the new political status of the Dominions should be formulated. The imperative business in 1921, however, was consideration of imperial foreign policy and exploration of ways and means for expressing it. The United Kingdom and the Dominions had already publicly disagreed about the Covenant of the League of Nations. Presumably they would continue to differ in the activity of the League, if only because the peculiar problems of each made a naturally unified outlook impossible.

[2] The official report, *Conference of the Prime Ministers, etc., London, 1921* (Cmd. 1474, H. M. Stationery Office, 1921) and the official press releases (*The Times*, London, June 21–August 6, 1921) reveal relatively little. *The Times*, however, was not then amenable to official control and published as well several informed and indiscreet reports, which can be checked against the Canadian Press Association dispatches by Mr. Grattan O'Leary of *The Ottawa Journal*, who was remarkably close to Mr. Meighen, and against *The New York Times* reports, which owed much to a working agreement with the other two sources and could use materials which they did not publish. The vigorous lobbyist for the Chinese government in Canada, the United States and Great Britain, Bertram Lennox Simpson, published under the pseudonym Putnam Weale, *An Indiscreet Chronicle from the Pacific* (New York, 1922), from which a good deal of ancillary material can be drawn. See also A. G. Dewey, *The Dominions and Diplomacy*, ii, 62-99 (New York, 1929). R. L. Buell's *The Washington Conference* (New York, 1922) was written somewhat close to the events. Two more considered analyses, by a Japanese and a Chinese scholar respectively, are Y. Ichihashi, *The Washington Conference and After* (Stanford University, 1928) and C-F. Chang, *The Anglo-Japanese Alliance* (Baltimore, 1931). Incidentally to general preoccupation with Far Eastern affairs since 1927, there have been in Canada and elsewhere substantial revelations by informed persons of what happened in 1921, which can be subjected to various tests of comparison. I am particularly indebted to Professor N. A. M. MacKenzie of the University of Toronto.

[3] There was some confusion over its descriptive title, but common usage has been to group it with the Imperial Conferences.

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As they surveyed the international political scene, the members of the Conference were well aware that the German and Russian threats to the empire had been at least temporarily dispelled, but with the notable exception of the Canadians, there was a natural hesitancy to admit that the United States had become potentially the leading world power, and it was not yet habitual to think of Japan as the third or fourth Great Power. It was particularly difficult to keep clearly in mind the differences in scale and implication between Britain's relations to Japan and to France. Earl Curzon[4] particularly, perhaps because he had just entered upon full responsibility as Foreign Secretary, subordinated his obsession with Asiatic affairs to the arduous delights of remaking Europe and the Near East, tasks in which he pictured his country to be a sort of just schoolmaster, restraining incorrigible France and dispensing equity and discipline to the troubled states. He and the others could, when they thought of it, correctly appraise their enormous debt to Japan during the war, particularly for naval aid in the Pacific, but they were less likely to keep themselves aware of the use which Japan had made of British preoccupation elsewhere by embarking on the dismemberment of China. They were plagued, too, by the prevalent assumption that the Japanese were more sensitive to offense, and less easy to deal with as statesmen to statesmen, than Europeans. It was somehow a unique task to restrain Japan and a risky business to terminate an alliance with her.

The great cloud lowering in the diplomatic sky was one which it is easy to forget. The surprising defection of the United States from the peace settlement, the League and international affairs generally, had left behind it a bewildered uncertainty among the framers of foreign policy. A Great Power had never acted in just that way before. The stunning effects of American abstention had dulled attention to the incipient activity which a few observers detected in the new President and in his Secretary of State, the Hon. C. E. Hughes. The habit of the day was to expect little or nothing from the

[4] He became Marquess on July 1, 1921 in the course of the Imperial Conference.

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United States except perhaps obstruction and to take it as axiomatic that no dependable engagement for continuous policy on anything could be obtained from her.

Yet the mere passage of days was irresistibly making the Anglo-Japanese Alliance the principal business of the Imperial Conference, and consequently its members were steadily forced to grapple with the realities involved in the existence of the enigmatic American colossus and in its attitude towards Japan. The Alliance, made in 1902, had been renewed with Dominion approval in 1911 after the addition of a clause which excused either party from the war obligation against a third with which it should have concluded a treaty of general arbitration. This proviso against an Anglo-American conflict had become effective in September 1914, in spite of the earlier defeat in the Senate of Grey's arbitration treaty, by reason of Bryan's Anglo-American " cooling-off " treaty, and American attention had been repeatedly and pointedly drawn to it by Japanese and British public utterances. The imperial conferees had been forewarned that the Treaty would come to an end on July 13, 1921, on the ground that the joint Anglo-Japanese address of July 8, 1920 to the League of Nations concerning its incompatibility with the Covenant amounted to denunciation. Some confusion had arisen from the additional intimation that a three-months' extension was being negotiated for with Japan, but the assumption on June 20, the opening day of the Conference, was that in three weeks the Alliance would expire if the Conference did not arrange to renew it.

Mr. Meighen arrived at the Conference opposed to renewal because he felt that it would imply some measure of toleration towards Japanese aggression in the Far East. The Canadian people had half-consciously voiced the same opinion. A similar feeling in the United States threatened to eclipse the knowledge that the Alliance expressly precluded British assistance to Japan in a war with the United States. Canada's fear of her own territorial implication in any American-Japanese conflict added urgent force to the basic principle of her foreign policy, that is, maintenance of the best possible relations between Great Britain and the United States. Renewal of the

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Alliance must be resisted because it would be so potent a threat to good Anglo-American and Canadian-American relations, upon both of which Canada depended for her sense of security.

Mr. Meighen's road to that decision cannot have been an easy one. He had not quite completed a year as successor to Sir Robert L. Borden as leader of the crumbling coalition government in Canada. His own party, the Conservative, which had always emphasized its loyalty to the British connection, had been almost consistent in its acceptance of British leadership in foreign policy. Indeed Mr. Meighen had won repute and his Federal Cabinet rank during the debates of 1912 and 1913 concerning Borden's proposal to vote $35,000,000 for British battleships.

Yet whatever his personal and party inclinations may have been, he had discovered that Canada, true to her North American character, and harassed by the first post-war depression, was asserting almost the same sorts of isolationism and pacifism as the United States, although with an easier conscience because of her active participation in the League of Nations. The resurgent Liberal party was trying to capitalize this temper. One of its leading newspapers, *The Globe* of Toronto, had as early as Dec. 28, 1920 explicitly opposed renewal of the Alliance.[5] In the House of Commons during March and April, its spokesmen made two determined attempts to force Mr. Meighen to commit himself against the Alliance, but he managed to evade them. These passages-at-arms, however, stimulated public attention, and after the end of April, the press, which had in general confined itself to constitutional issues at the Conference, began to advise its readers about the Anglo-Japanese Alliance. Disregarding the non-committal and the uninformed, it can be said that there were only two outstanding exceptions to general disapproval of the Treaty. *The Star* of Montreal, an ultra-conservative paper, put on a drum-and-trumpet campaign for renewal, and the Pacific Province of British Columbia inclined to favor it if Canada

[5] I am greatly indebted to Mr. T. H. LeDuc of Columbia College and the University of Toronto, who has generously put at my disposal the results of his investigation of Canadian press and public opinion concerning the renewal of the Alliance.

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specifically retained control of Japanese immigration. The clearest and best-informed voice against renewal was that of the veteran Western Liberal editor, Mr. J. W. Dafoe, of *The Winnipeg Free Press*. Unlike other Canadian journalists, he stuck by the issue throughout 1921 until it was settled at Washington, so that his many readers on the Canadian prairies (where Mr. Meighen's own constituency was situated) were never allowed to ignore or forget it.

Mr. Meighen had the courage to stomach the embarrassment of espousing a cause which the Liberals had tried hard to preëmpt as their own, but he did not publicly acknowledge his intention before the meeting of the Conference. *The Journal* of Ottawa, a Conservative paper close to the Government, hinted at his determination to oppose the Alliance before he left Canada. Mr. Grattan O'Leary of that paper acted as special correspondent at the Conference for the Canadian Press service. Before the Conference opened and with still no public pronouncement by the Canadian Prime Minister himself, Mr. O'Leary not only asserted Meighen's opposition in his cabled despatches to Canada, but went so far as to list his reasons.

Mr. Meighen, relatively inexperienced and almost unknown in imperial circles, found himself a minority of one[6] in the Conference, except for quite incidental aid from General Smuts of South Africa, whose interest and energies were focused on an effort to disentangle the United Kingdom from France and to promote thereafter a new international régime under the aegis of his cherished League of Nations. The regular British delegation was a most impressive one. Mr. Lloyd George presided with more than his usual wariness because he had been so busy with other affairs of crucial importance that he had had to leave the entire marshaling of arguments for policy to his Secretary of State for Foreign Affairs.

[6] His colleague, the Hon. C. C. Ballantyne, Minister of Naval Service, was inactive in the clash of opinions. The influence, before and at the Conference, of Mr. L. C. Christie, Legal Adviser to the Canadian Department of External Affairs, may well have been considerable. He served on the secretarial staff of the Conference.

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Earl Curzon had prepared in Foreign Office style an analysis and synthesis of the elements of British policy for the statesmen from the outer marches of the empire. He was ready to instruct them as to why, all things considered, the British Cabinet favored renewal of the Anglo-Japanese Alliance, in correct League of Nations form, for a short term of years, pending broader international agreement on Pacific affairs. He was actively supported by the Right Hon. W. S. Churchill, Secretary of State for the Colonies, somewhat less vigorously by the Right Hon. A. J. Balfour, Lord President of the Council and responsible chiefly for League of Nations affairs, and rather slightly and ineffectively by the Right Hon. Austen Chamberlain, Lord Privy Seal. On appropriate occasions, this bright galaxy received added lustre and weight from the presence and arguments of the Lord Chancellor, Viscount Birkenhead, and of the ministers and officials of War Office, Admiralty, General Staff and Air Service.

So far as the Alliance was concerned, the Dominions' representation which confronted Meighen resolved itself pretty much into the Right Hon. W. M. Hughes, Prime Minister of Australia, and his *fidus Achates,* the Right Hon. W. F. Massey, Prime Minister of New Zealand, because the South Africans were concerned chiefly with the constitutional implications of dominion status, Newfoundland was not represented, and the Indian delegation was mainly interested in Indian self-rule and the treatment of Indians in South Africa. Hughes and Massey had let their own countries and the world know that they wanted renewal of the Alliance. This stand by Hughes represented a relatively recent conversion and was perhaps the more fervent for that. During the first year or so after the war, he and his party in Australia had been somewhat resentful of "White" Australia's dependence on Japan and had welcomed the Wilson naval program in the United States as affording relief by creating a new balance of power in the Pacific. But when the fall in commodity prices seemed about to ruin Australasia, when Britain's own distress made it impossible to expect much relief from indebtedness in London, and when it became clear that the Singapore base could be

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hardly more than planned for, Australasia felt that she could count on little British effectiveness in a naval race on the Pacific. That seemed to mean a choice between Japan and the United States as an ally and when Hughes, remembering that Japan had been even more generous than the bond in the Alliance during the war, reflected also on the paralyzing withdrawal of the United States from world affairs, he unhesitatingly chose Japan. He and Massey were probably more certain than Curzon and the British Cabinet that it was the right choice.

Individual action was so important in the Conference that the characteristics of the principal protagonists repay attention. Lloyd George and Curzon are sufficiently well known, the one for his swift, intelligent expediency and the other for his Roman manner and masterly marshaling of argument. It should be remembered, however, that Curzon had just begun to reveal the pliable, apparently unresentful acceptance of dictation from Lloyd George which has been such an enigma to his friends and biographers.[7] The Prime Minister had learned that he could with impunity disregard his Foreign Secretary even in the matter of personal and Cabinet commitments. He had, it is true, some excuse for changing his mind about what was statesmanlike at a time when crucial negotiations concerning the Irish settlement, the Egyptian imbroglio, the coal strike and the future direction of British Far Eastern policy were all on the *tapis* at once.

Both Hughes and Meighen were quite unlike their British colleagues. Hughes was a full-blooded fighter with little or none of Curzon's respect for punctilio or Lloyd George's gift for compromise. Once kindled by his own righteous indignation, he shut his mind to the steps by which his opponent had reached his conclusions and let himself go in ruthless assaults

[7] It has been ascribed to his conviction that if he stuck by his guns and resigned, the Foreign Office would become a mere sub-department of No. 10 Downing Street. See Harold Nicolson, *Curzon: the Last Phase* (New York, 1934) and Earl of Ronaldshay, *The Life of Lord Curzon*, vols. II, III (New York, 1928). Both of these biographers bear out the introductory remarks in this paper by ignoring in Curzon's career the crucial decision of the 1921 Imperial Conference.

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on him and them, asking no quarter and giving none. He was equally warm and elliptic in proclaiming the self-evident rightness of his own case. Meighen, on the other hand, was most brilliant and effective in opposition and grew icily unyielding when under fire. Yet his irony, his laconic exposition of fact and his crisp argument compelled a respect for his thesis which mere stubbornness could not have commanded. Both Hughes and Meighen deserve distinction among world statesmen for their early recognition that the Pacific, rather than Europe, must henceforth be the compelling center of international attention.

The course of events relevant to the Alliance can be divided into three periods. The meetings from June 20 to June 27 were fairly restrained and colorless except for some acrid personal exchanges and early emphatic assertions by Hughes and Massey that they favored renewal of the Alliance. Curzon presented his general picture of foreign policy, but in commenting on it Meighen postponed any reference to the Alliance. Instead he put forward for discussion three principles to govern the conduct of foreign policy by the United Kingdom and the Dominions which followed logically the past constitutional progressions of Laurier and Borden. On June 28, Curzon presented the British Cabinet's case for the renewal of the Alliance and warned the Conference that only sixteen days remained in which to act. It was, therefore, not until June 29 that Meighen at last stated his position in the face of critical interjections from Curzon and other members. Canada opposed renewal of the Alliance in any form because the reason for its existence was past, such entanglements were incompatible with the League of Nations idea and both the United States and China would regard any such treaty with mistrust, as implying benevolent neutrality towards Japanese aggression. He reminded the Conference that good Anglo-American relations were the touchstone of British policy and the hope of the world. As early as February, in opposing renewal, he had urged on Lloyd George a conference about Pacific affairs among Japan, the United States, China and the British Empire. He still thought that that was the best step to take.

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It was at this point that Hughes exploded in a wrathful discourse that poured forth in spite of tactful interruptions and even adjournments. Was Great Britain to abandon and insult a faithful ally merely because the United States, which had broken all commitments, speaking with the voice of Canada, ordered her to do so? Such action would earn contempt instead of favor in the United States, and Japan would be irreparably offended. The British Empire must have a reliable friend in the Pacific. The United States could not be depended upon to do anything and a deeply wounded Japan quite properly would seek revenge. Partial accounts of this profound cleavage in empire councils reached the press and became public on June 30.

The second period began that day when Lloyd George realized that Curzon's traditional Foreign Office tactics were likely both to deepen Meighen's determined convictions and further to excite Hughes's vehemence. His first move was a daring play to ease the time pressure and yet avoid the risk of insulting Japan. After a brief attempt to mollify Meighen and Hughes, he startled the meeting by saying that he did not believe that the notice of incompatibility sent to the League in July 1920 constituted a denunciation of the Alliance, and that he had asked the Lord Chancellor to report to them the opinion of the Law Officers of the Crown.[8] Viscount Birkenhead thereupon obliged with a deft, persuasive corroboration of his Prime Minister's views, a not impossible exploit in so un-legal a field as the construing of diplomatic documents. He convinced the Conference that under the termination clause of the Treaty, it would continue to run until twelve months after denunciation by either party. The members thereupon adjourned to get their bearings again, and next day over their breakfasts read a closely circumstantial account of their supposedly confidential meeting.

From the beginning of the Conference there had been a certain amount of lip-service paid to Meighen's idea of a Pacific Conference in the form of amiable but necessarily in-

[8] He appears to have been affected also by Japanese disinclination to view the notice sent to the League as a denunciation.

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conclusive suggestions that the United States be asked to be a party when the Anglo-Japanese Alliance was being altered into League of Nations form. The Japanese Ambassador to England had been sounded out on the subject without much success. Since Ambassador Harvey in London could not safely be regarded as an authoritative spokesman for the new Harding Administration, feelers were put out to Mr. Secretary Hughes at Washington through Sir Auckland Geddes, the British Ambassador. Before Curzon presented the Cabinet's case for renewal on June 28, Geddes had informed him that Hughes strongly disapproved of renewal of the Alliance, but was interested in tripartite action. That information, imparted to the Conference by Curzon, had not outweighed the arguments for sticking by Japan, yet, coinciding with Meighen's reminder of his February proposal, it had opened a slight fissure in the British case. During the efforts to make peace between Meighen and Hughes, further favorable references to a tripartite conference or agreement had been used for their soothing effect. On July 1, therefore, when Meighen started all over again on the basis of the new Birkenhead assumption, his opponents had weakened their position. He celebrated his country's national birthday by hammering the wedge of his logic into the crack in the strong wall which faced him. Abbreviating his feud with Hughes to a refusal to accept argument based on caricature of his own stand, he bluntly attacked Lloyd George for acquiescing in it. While that shock was being absorbed, he tried to conscript Smuts and Curzon as allies instead of adversaries by disregarding their arguments for preserving the Alliance and by putting the full weight of what he believed to be the correct interpretation of the situation into the mild concessions which they had occasionally made to his view.

It is to be hoped that some day an explicit account of the give and take of that meeting may be made public, for it must have been a remarkable example of one man's forcing a group to put their knowledge into new logical patterns in conformity with an altered world. Meighen wanted them to realize the importance of the Pacific and to gamble possible American

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willingness to collaborate on Pacific affairs against what they believed to be a certain affront to Japan and possible revenge. He had brought Lloyd George and Curzon around to considering ways and means for a three- or four-power conference, when Hughes broke in with another violent speech which virtually completed his work for him.

Lloyd George at once took command in a fashion which revealed that he had gradually reached fundamental agreement with Meighen. It seems probable that, alarmed over the effects upon Japan of steady leakage from the conference room, he had decided that the chance of cementing Anglo-American friendship was eminently worth the gamble. At his request, Curzon surprised the thoroughly perturbed Conference by outlining a procedure to be embarked on at once in order to arrange a conference on Pacific affairs among Japan, the United States, China and the British Empire. As other members spoke conciliatingly concerning this proposal, they found themselves, along with Lloyd George, repeating Meighen's arguments to the tune of a running fire from Hughes, who had suddenly become the minority of one. Angry and bewildered at the way in which the ground had shifted under his feet, he could not even get assurance that the Alliance would continue if the Pacific Conference failed. That day saw the Anglo-Japanese Alliance shelved and on the shelf it was to remain.

The third period, which began after Meighen's victory of July 1, was much too complicated to be described here. The matter of the Alliance had burst the walls of the Conference chamber to invade the foreign offices and chancelleries of the world. Briefly stated, what happened was that the appeal of possible international collaboration on the Pacific tension and on naval disarmament to a world in the depths of economic depression became so great that the larger questions speedily engulfed the Anglo-Japanese Alliance. President Harding's welcome invitations of July 10 to what soon became a world conference at Washington cut through an impossible tangle of negotiations which were being conducted with Japan, China and the United States from London. The punctilio of priority

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and other nice points of diplomatic precedure went by the board so quickly that remote Japan as well as bruised Australia might quite properly be offended. Lloyd George rushed to the House of Commons from the Imperial Conference with the news, and in his speech there could not resist the implication that the Imperial Conference, rather than President Harding or Secretary Hughes, had engineered the happy event. Meighen was sufficiently satisfied by attaining his ends to accept at first for Canada at the Washington Conference an international status which was distinctly inferior to her rank at Versailles and Geneva. It is perhaps also significant that Japan subsequently became the only nation outside of the natural choices of Great Britain, France and the United States with which Canada exchanged diplomatic representatives.

So clear-cut an episode, the first notable occasion of a Dominion formulating the policy of the British Empire, has naturally been open to unduly simplified explanations. It did not, for instance, indicate that Canada could at any other time dictate British foreign policy. Actually the present Conservative Government in Canada has been in difficulty with the Canadian people because of its insufficiently explained attempts to hold up Sir John Simon's hands during the vain effort to prevent Japan from deciding to leave the League of Nations. It did not signify a wisdom unique in Mr. Meighen and the Canadians to prefer multilateral international agreement to bilateral, for in 1921 the League was a working concern and the conference method was so much in the air that when the United States emerged from isolation she naturally turned to it. It is worth noting, too, that Canada enjoyed peculiar security, for although aware that she was a Pacific state, she had the Monroe Doctrine as well as the British Navy for shelter and experienced neither the feeling of exposure so natural in Australasia nor the worrying sense of inability to match Japan and the United States in the Far East so pervasive at Westminster.

The really serious misinterpretation of the events was Mr. Hughes's flat identification of Canada with the United States, for which the only excuse was that if good Anglo-American

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relations were highly important to the rest of the Empire, they were vital to Canada. Truly Canadian interest and policy, however, are not so simply to be found. The consciously and unconsciously exercised ability of the United States to bruise Canada, coupled with the natural feelings of a sturdy small nation towards an overpowering neighbor, have made Canada to a discernible degree anti-American and pro-British. Perhaps it took as much courage in Mr. Meighen to risk Canadian taunts of pro-Americanism as to withstand Mr. Hughes. Yet instead of Canadian taunts he ultimately received Canadian acclaim. The reason was that the crisis of 1921 was so serious that it broke through such superficial crusts as anti-Americanism and pro-Britishism. What Mr. Meighen found in Canada and in himself was Canadianism, marked by a vital concern with Canada's position in relation to a rapidly changing Pacific. It is not surprising that Canadian interest and policy revealed themselves to be quite similar to the interest and policy of the United States, for they sprang from a North Americanism whose roots in time and experience were of equal depth in the two nations.

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THE DISTRIBUTION OF CONTROL AND RESPONSIBILITY IN A MODERN ECONOMY

1. The Need for Combining the Approaches of Economic and Political Sciences

THE two disciplines of political science and economics, once distinct and separate social sciences, are being increasingly thrust together and made to join forces. Economic developments on the one hand and the activities of government on the other can only be understood and met by combining the approaches of these disciplines.

The field within which the political scientist must operate is increasingly the field of economic activity. The problems of economics have moved beyond the area to which the economist's traditional principles and analyses apply and call for the type of consideration familiar to the political scientist. The need for politico-economic analysis arising out of this situation demands the best minds of both sciences to forge a new pattern of thinking which will weld the elements of politics and economics into an integrated whole having validity in the present day.

Activities of the past two years in Washington, especially, have created situations which lie outside of the concepts familiar to students of both disciplines. Where does a code authority fit into preconceived notions? What can be meant by a partnership in enterprise between government and business? There are no clear-cut philosophical patterns to which these activities conform. The traditional distinction between government ownership and private ownership has no relevance to the situation. Does a code authority represent government ownership or private ownership? Does a company subject to a measure of code authority control represent private or government enterprise? Such questions have no answer in terms of inherited concepts.

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Traditional economics is essentially a science of economic organization through the market place, and it abstracts from all problems of administrative organization. In the most rigorous of traditional economic pattern-making the individual is reduced on the one hand to a buyer and seller and on the other hand to a simple combiner of economic ingredients. The worker sells labor and buys other commodities to combine them in an economic pattern of living; the business man and the business enterprise buy labor and other commodities to combine them in economic proportions for sale. The whole economic process is reduced in the traditional economic thinking to a process of buying, recombining and selling—to the science based on the market place. It is the function of this science to depict the organization of economic activity as it is brought about through the market. Such organization of economic activity as is brought about by administration is simply disregarded by the traditional economist. He recognizes administered activity but treats it as lying outside of his chosen realm.

Political science, by contrast, deals primarily with problems of social associations and administrative organizations. It makes little difference for this discussion whether political science has only to do with the state—a great social association—or whether it deals with all types of social associations, of which the state is the most important. What is significant here is that it analyzes a phase of activity which is wholly outside of traditional economics—namely, administrative organization. Each of these social sciences thus analyzes one of the two great forms of social organization, market organization and administrative organization.

A century ago the sharp distinction between politics—the science of administrative organization in the state, and economics—the science of the market place, was appropriate and valid. In this country, the political sphere was then the only one in which administrative organization was of primary social significance. In the sphere of economic activity the existence of administrative organization was of secondary, if not negligible importance, and the main forces of economic life appear

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to have operated much as though associated activity of factory and business enterprise did not involve administrative organization. Quite properly the economist could abstract from this fact of administration as being of the second or third degree of importance.

But economic developments during the past hundred years have played an outrageous trick on the economic fraternity. Gradually but steadily great segments in the organization of economic activity have been shifted from the market place to administration. The traditional economist, constantly abstracting from this growing area of administered coördination, must find himself dealing with a smaller and smaller segment rather than the whole of economic activity. This tendency to abstract and the resulting loss of a major part of economic activity from the field of economic study is clearly brought out by the criticism leveled by a leading statistician in one of the most prominent of our eastern universities at certain of the figures I have published. He has maintained that by including public utilities, railroads, and those other industries in which conditions are especially favorable to concentration, in figures of concentration, I have given a false picture of the degree of economic concentration existing today. He treats these industries of high concentration as "special cases", to be abstracted from in considering the economy as a whole. Yet the areas he insists should be excluded comprise from 70 per cent to 80 per cent of all industrial wealth. Clearly, if economics is to deal only with market-induced coördination it will lose much of its subject matter.

The extent of administrative coördination of economic activity is difficult to realize. Today hundreds of thousands of workers are often organized in a single great enterprise. Their activity is coördinated, not through the shifting of prices and of supply and demand in the market, but through positive administrative action. In 1929 the American Telephone and Telegraph Company was coördinating the activity of over 450,000 people within its system. Think of the difference between this situation and the 450,000 separate and independent enterprises such as we would have if all economic organization were accomplished through the market place.

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In 1929, the control of something approaching half of industrial activity had become an administrative matter handled within 200 great administrative units. In the decade following the war the growth in the relative importance of these large units was phenomenal. During the depression the relative position of large corporations has increased still further in importance as large companies have increased their assets or held them constant while the assets of smaller companies have melted away. Whereas in 1929, 200 corporations controlled approximately 49 per cent of corporate wealth (excluding the duplication of financial corporations), by the beginning of 1932, 200 companies controlled something like 54 per cent of the wealth of all non-financial corporations. Clearly, the economist who regards administrative organization as of negligible importance and abstracts from it is belying the facts.

This shift from organization through the market place to organization by administrative action has gone so far that the market place, though still of major significance, appears to have become rather a disorganizing than an organizing influence. Instead of having prices set in the market place by the interaction of large numbers of buyers and sellers, prices are set by the administrative action of great organized units. The increased rigidity of prices, a rigidity which seems inevitably tied up with the administrative organization of economic activity, reduces the flexibility of the market place and destroys its efficacy as an over-all coördinator. The great globules of administrative enterprise fail to mulsify into a homogeneous and balanced economy. A Ford Company can throw a whole countryside into depression by its single decision to alter radically the character of its output. Since the market place must operate on the principle of large numbers if it is to be an effective over-all coördinator, the very transfer of coördination from market place to administration reduces or destroys the capacity of the market to act as an effective coördinator.

Concentration into great economic units has thus brought us to a highly unstable position so long as we rely on the market place as coördinator. This is an intolerable situation. We must take positive action along one or the other of two courses.

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Either we must make the market place a satisfactory coördinator or supplement the market place by other coördinating devices.

To make the market effective as a coördinator, it would presumably be necessary to reverse the trend of a century and break the large units into a multitude of smaller enterprises. This would involve the loss of much of the advantage of modern technology and there would seem to be little popular support for such a thorough-going atomization of industry as would be necessary to make the market effective. The thrust of the present Administration is clearly in the direction of increasing the element of administrative coördination of economic activity rather than its elimination.

For the development of effective administrative coördination, the traditional economist has few tools of analysis. It is the technique of analysis and the principles of political organization which the political scientists have developed in the study of administrative organization which have become applicable to the newer economics of coördination. It may well be that the economic and political scientists together can work out a blend of market coördination in some areas and administrative coördination in other areas of economic activity which will both insure the smooth and efficient workings of our economy and at the same time preserve the maximum of individual freedom.

2. *The Problem of Pattern-Making*

In seeking to develop a pattern which can serve as an effective guide for future politico-economic developments, our terms of analysis must be realistic and relevant to the situations growing out of current economic and political life.—For America, the immediate problem is to seek out a pattern of organization which is neither capitalism in the complete *laissez-faire* sense nor socialism in the sense of complete state ownership of the instruments of production. There are many who despair of any such intermediate ground and insist that it is necessary to choose between private property and government property. But such an insistence disregards the developments of the past fifty years and harks back to language and concepts which

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applied a century ago when property ownership meant that something tangible and concrete was mine or thine. The development of great administrative economic units has broken up or dissolved private property in the instruments of production and opened the way to a new approach. If we are fairly to analyze the possibilities inherent in our present situation we must exorcise the concept of private property as a *"Ding an sich"*. Only then can we properly approach consideration of the possible patterns of economic organization.

Law schools are to an increasing extent recognizing the dissolution of the old "private property" and are teaching that property involves a bundle of rights and powers—a bundle of relationships between persons. According to such a concept, not only may an individual lay claim to a bundle of rights and powers over other persons in respect to a house or enterprise, but since these rights and powers which constitute property are a bundle of separate threads they may be distributed by appropriate action in almost any desired combination. For instance, it is possible that the rights and powers with respect to a particular house could be so split up that A and his heirs or assignees would have the full rights and powers of occupancy, that B would have the sole rights and powers with respect to rebuilding or altering the house, that C should have the sole responsibility of paying taxes, that D should receive annual money payments from the occupant of the house, and that E should own the land on which the house is built. Who owns the house? Actually the rights and powers are so grouped into smaller bundles that it is no longer relevant to say that so-and-so owns the house. In much this fashion, modern corporate development has redistributed the rights and powers in business enterprise.

But even more than the simple break-up of the customary bundle of property rights and powers into smaller bundles, the modern corporation has tended to separate rights from powers. By a slow process of development property rights have been separated from property powers. It is this regrouping that has the greatest importance for our analysis. Instead of making smaller bundles of property rights and powers which are

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qualitatively the same as the larger bundles out of which they are made, the separation of rights and powers brings a qualitative change in the bundles derived.

This difference in quality can be most clearly seen if we transfer our analysis from the legal to the economic field. Where the lawyer deals with property, the economist deals with wealth, and just as legal students have, in the analysis of property problems, adopted the concept of a bundle of relationships, so corporate development is forcing the economist to treat wealth in terms of a bundle of interests and powers. Things as such cease to be the central problems of wealth. Rather, we must deal with the social relationships between individuals, sometimes relationships which have no attachment to tangible things—stocks and bonds and human organization —sometimes relationships between individuals but also relating to tangible things—houses or factories.

When we deal with wealth in relational terms, the two types of relation already indicated in the law have their economic analogues. Corresponding to legal rights are economic interests; corresponding to legal powers are economic powers. To distinguish economic from legal powers, we can adopt the term "controls" for economic powers. In relational terms, then, wealth involves a bundle of interests and controls. These are the basic elements—the basic concepts out of which our new pattern must be built.

Consider the modern corporation in the light of these concepts. The dispersion of stock ownership in our great corporations has subdivided the interests in a single enterprise into the hands of hundreds of thousands of persons. At the same time, the major threads of control over great segments of economic activity have been concentrated into the hands of a few central administrators, or, all too often, into the hands of irresponsible manipulators. In most of our large corporations, the dispersion of security holdings has involved a separation between the interests and the controls which have traditionally been associated with ownership. The ordinary stockholder can do as he pleases with his share of stock—sell it, hold it or burn it up—he has the full interests and controls over his

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share of stock which constitute traditional ownership. But over the corporate enterprise as such he has practically no control, though he still retains the full interests of a part-owner. In essence, he is reduced to receiving or not receiving dividends. The threads of interest and the threads of control run to different hands—the interests scattered, the controls concentrated.

But the separation of interests and controls has gone very much farther than this in modern enterprise. In the old days of individual enterprise, a single person would constitute an enterprise—being not only owner but also worker, as in many of our farms and retail stores today. The interests of the individual as a worker were in the same hands as the controls over his activity. With the widespread adoption of the factory system, a process was set in motion whereby the worker became increasingly separated from direct control over his own activity. The very act of hiring out constitutes a partial surrender of control on the part of the worker. During working hours the worker agrees, within limits, to operate under the direction of a boss. It is this very surrender of control on the part of the worker that makes factory enterprise so much more efficient than individual enterprise. The activity of a large number of workers can thus be directly coördinated.

Though workers surrendered important elements of control in hiring out to a business enterprise, so long as an enterprise was small and one of a large number competing for the services of workers, the latter retained a measure of control over their activity. A worker could always transfer to some other enterprise. But as administrative units became ever larger, the direct control of the worker over the conditions under which he operated became less and less. It was this separation of worker from control which was the basis of Marx's thesis of the class war. Though the interests of workers in economic activity remained as great as ever, their share in the direct control over enterprise diminished. To some extent this loss in direct control was counterbalanced by a measure of control through labor organization—consider how a powerful union can reduce the elements of control over an enterprise which are

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traditionally associated with ownership—but for the most part, workers have lost the major part of their control while retaining their interests in full.

In a third sphere, interest and control have been separated by the development of great administrative units. In the old days of small enterprise, the consumer could bargain on a fairly equal footing with the seller and could in this way exercise a very direct control over industrial activity—over the price and production policy of enterprise. The individual buyer had sufficient control over enterprise to protect his interests as a consumer. He dealt directly with a seller, could bargain, and could find many alternative sellers if his interest dictated.

Today, the consumer has lost much of his old direct control in industry. He deals with a sub-subordinate in a great enterprise. He is faced with fixed prices and a "take it or leave it" formula. For any one article he has few alternative sellers to choose from. He no longer has the means to test quality at all comparable to that of the seller; and finally, he is bludgeoned by all the arts of advertising to conform to the pattern laid down by one or another of the great units of economic organization. The element of consumer control over industrial activity is truly at low ebb. No longer does the market place give the consumer an effective share in the control of economic enterprise.

The shift of large segments of economic activity from coördination through the market place to coördination through administered activity has thus gradually sucked controls over economic activity away from the three parties mainly at interest—the security holders, the workers and the consumers. It has placed this control in the hands of administrators, nominally responsible to the security holders but factually responsible in all too many cases to no one. Such a concentration of controls leaves the security holders, the workers and the consumers—the forgotten men—with great and basic interests in industrial activity but with minimum controls over it. Controls without interests lead to irresponsible actions. Interests without controls lead to social frustration.

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The problem of pattern-making which confronts the combined forces of economists and political scientists thus involves:

1) a means of determining what areas of activity and what functions require administrative coördination and what areas and functions can best be left to coördination and control through the market place.
2) a valid form of administrative coördination for the areas where the market fails to function.
3) a method by which controls can be reattached to the parties at interest.

The solution must be in terms of the locus of controls rather than in terms of the irrelevant concept of "ownership".

3. Basic Principles for Pattern-Making

In developing a pattern there will be ready agreement on certain principles. First, we want the maximum decentralization of control that is compatible with a smoothly functioning economy. Few want centralization for its own sake. Great enterprises have learned to decentralize control and responsibility within the confines of the single enterprise while carrying through certain significant threads of control to the central coördinating administration. On a national and perhaps international scale, the bulk of the threads of control should be left in the hands of individuals or enterprises while certain threads should be carried clear through to the central body—let us say, the government—and other threads should be carried through only to intermediate bodies, such as code authorities. Decentralization could be on a local as well as on a functional basis. It may well be that with greater centralization of certain threads of control we can develop a vastly greater decentralization of most of the threads of control than now exists. Gradually, the rigid lines which demark single enterprises will become softened and blurred, just as the holding company—subsidiary set-up and the affiliated company set-up have already blurred the lines of enterprise, or much as that great confederation of grocery stores, the Independent Grocers' Alliance, has located certain threads of control beyond the border of the single independent unit.

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But the redistribution of threads of administrative control is not sufficient. It is necessary not only to avoid a top-heavy or bureaucratic structure but to insure that those exercising controls should be responsible to the parties at interest in industry. Here arises the question of how and whether each of the interests should have a direct share in the ultimate controls. The extensive demand that workers and consumers have representation on code authorities reflects a recognition of this issue.

Here, then, is our basic problem of pattern-making. First we must drop the confusing concepts of private property and private enterprise. The modern corporation has destroyed their usefulness as tools of analysis. Second, we must cast our analysis in terms of interests and controls. Third, we must distribute controls, centralizing only those which are essential to the smooth and adequate functioning of our economy. And fourth, through some form of representation, we must bring back to the parties at interest in industry, controls over those exercising administrative power in order that ultimate interest and ultimate control may go hand in hand. Only as the two related disciplines combine on this problem can the basic pattern of a new and distinctly American political-economy be developed.

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DIRECT TAXATION IN HUNGARY[1]

TOTAL Hungarian public revenue, state and local, amounts to approximately P. 1,000,000,000[2] annually—between 30 and 45 per cent of the national income.[3] Almost half of this amount is obtained from direct taxes.[4] Thus the aggregate tax burden is very heavy and an unusually large portion of that burden rests directly on property and income. In spite of the fact that the methods and experience of Hungary offer much that is interesting to the student, there is an almost complete lack of readily accessible information regarding Hungarian taxation. It is the purpose of the present paper to describe direct taxation in Hungary with special reference to its historical development, quantitative importance and distinctive features. Other sources of revenue will be touched upon briefly, only in so far as this will aid in establishing the rôle and importance of direct taxes.

The development of Hungary's present tax system began with the temporary success of the revolution for independence in 1848. Prior to that time Hungary had only a primitive

[1] The writers desire to record their grateful thanks to members of the Hungarian Finance Ministry for their critical reading of the manuscript and careful checking of the statistics and statements of facts. This article is based in part upon printed sources and in part upon materials gathered by Mr. Haig during a brief visit to Budapest under the auspices of the Carnegie Endowment for International Peace during the summer of 1931.

[2] The present Hungarian monetary unit is the Pengö (P.), the equivalent of $0.17489 under pre-1934 gold standard parities. Unless otherwise indicated, the figures used in the following pages were taken from (or are based on) the publication of the Hungarian Finance Ministry, *Tax Statistics* (*Adó Statisztika*), Vol. I, 1929, Vol. II, 1932, Vol. III, 1933.

[3] Anthony Éber, Julius Szigeti and Leslie Levatich, Hungarian economists, have estimated Hungary's 1931 national income at P. 2,200,000,000, P. 2,500,000,000 and P. 3,000,000,000, respectively.

[4] The phrase "direct taxes" is here used in the sense in which it is current in Hungary, to include not merely income and property taxes but the motor vehicle road tax as well. *Cf. infra*, p. 104.

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revenue system, the conspicuous features of which were virtually complete reliance on direct taxes and exemption for the nobility. During the ten years preceding 1848 the revenue collected from direct taxes fluctuated between $2,300,000 and $2,400,000 annually.[5] Following the overthrow of Austrian rule, the Kossuth government introduced the tax reform of 1848,[6] based, in the language of the statute, "on the principle of common sharing of burdens".[7] However, the Kossuth régime was short-lived and when, two years later, Austria regained control, she imposed on the country a system of taxation patterned closely after that employed by the Viennese government itself. The newly introduced levies were unpopular, not so much because they differed greatly from those adopted two years earlier, but more because of their association with Habsburg suppression.[8] They nevertheless survived until 1868 when, following the Compromise *(Ausgleich)* with Austria, Hungary revised its tax structure. On this occasion, because the Austrian influence was still dominant, only a few changes were made. The next revision came in 1875. This in turn was followed by Finance Minister Wekerle's revision of 1909, introduced with a view to reaching certain new forms of wealth which had developed. The Wekerle revisions, together with additional changes adopted in 1912, were to have become operative on January 1, 1913, but difficulties in the Balkans led to their postponement (with the exception of the modifications of the land and house tax) until the second year of the Great War.

Hungary entered the war with a tax system which was inadequate. When Finance Minister Teleszky wrote to the effect that the financial position of the Hungarian government before the war, "if not favorable, was at least satisfactory",[9] he had reference to peace-time requirements. Public opinion was

[5] Calculated on the basis of pre-1934 gold standard parities.

[6] Act VIII of 1848.

[7] "*Das gemeinsame Tragen der Lasten.*" *Cf.* Fellner, F., "Die Reform der direkten Steuern in Ungarn" in Schanz's *Finanz-Archiv*, 1913, p. 138.

[8] Teleszky, J., *Hungarian Finances during the War* (Budapest, 1927; *A Magyar Állam Pénzügyei a Háboru Alatt*), p. 238.

[9] Opening sentence (translated) of his *Hungarian Finances during the War.*

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strongly opposed to increases in taxation and this feeling, added to the general political unrest, prevented the government from forcing fresh tax legislation through Parliament. Even in the years preceding 1913, the government had found itself compelled to finance a considerable portion of its current expenditure by borrowing. As the war advanced and circulating capital and profits increased, some tax increases, christened "national defense" measures, were indeed adopted but these were of slight consequence. The bulk of the war expenditure was met by inflation.[10] After the conclusion of the armistice, the process of inflation in Hungary proceeded at an accelerating pace, bringing in its train the virtual collapse of the tax system.

The transition from an inflationary to a stable economy was accompanied by interesting experiments, several of which are significant from the point of view of the evolution of the Hungarian tax system. The first occurred in 1920. It will be recalled that the Treaty of Trianon provided that:

> Within two months of the coming in force of the Treaty each of the States to which territory from the former Austro-Hungarian Monarchy is transferred, and each of the states arising out of the dismemberment of the Monarchy, including Austria and Hungary, shall, if it has not already done so, stamp with the stamp of its own government the currency notes of the Austro-Hungarian Bank circulating in its territory.[11]

Hungary sought to turn this operation to good account by retaining 50 per cent of the notes offered for stamping, issuing in exchange her 4 per cent bonds. It was hoped that this forced loan would supply sufficient means to balance the budget. But the four billion paper crowns thus realized sufficed to meet the deficit for a short period only. Soon it was necessary again to resort to inflation and depreciation of the currency continued at an ever-increasing pace.

[10] "Taxation policy during the war was neither aggressive nor productive." Teleszky, *op. cit.*, p. 238. Teleszky estimates that taxes provided only 5.18 per cent of the cost of the war, *ibid.*, p. 418.

[11] *Allied and Associated Powers v. Hungary, June 4, 1920*, Article 189, # 1. (H. M. Stationery Office, London.)

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The second experiment was carried out by Finance Minister Hegedüs, who assumed office at the end of 1920. At that time Hungary had not yet recovered from the series of revolutions and counter-revolutions which followed the collapse of the Habsburg Monarchy, and revenue from taxation had almost disappeared. In his effort to balance the budget, Hegedüs secured the permission of Parliament to impose a 20 per cent capital levy on all wealth, tangible and intangible. Hegedüs' measure differed from other capital levies in this important respect. Instead of making it a personal tax, applying to the total appraised value of the wealth of each individual, he attempted to make it an objective tax, applicable to each individual item of wealth. Moreover, payment was to be made "in kind" but the object could be "redeemed" by payment in cash. Hegedüs' ingenious scheme failed for a combination of reasons, foremost of which were the general collapse of public confidence and the lack of proper administrative machinery. Nevertheless, he actually succeeded in arresting temporarily the depreciation of the currency.

Last in this category of experiments was the so-called "thrift crown" mechanism. From 1923 onward, it was gradually becoming apparent that a reversal of the downward trend of events could be accomplished only with outside assistance. Efforts were made to secure a foreign loan large enough to finance a stabilization plan but the negotiations for a loan were slow and the delay contributed to further depreciation of the currency. On February 20, 1924, the Hungarian government made its final independent effort at internal reform by introducing a new unit of account, the thrift crown (*Sparkrone, Takarékkorona*), which was to exist contemporaneously with the paper crown.[12] This thrift crown was an artificial unit of account devised to serve as a stable measure of value in the event of further depreciation of the crown. It existed only in the realm of accounting, as no corresponding notes were actually printed. Its value in paper crowns, as calculated daily by the thrift-crown-commission, was based on three international

[12] *Cf.* Ecker, L. L., "The Hungarian Thrift Crown", in *American Economic Review*, September 1933.

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quotations: the value of the Hungarian crown in Vienna; the value of foreign exchange in Budapest; and the price of six arbitrage securities traded between Budapest and Vienna. One of the ends hoped for through the use of the thrift crown was the safeguarding of tax yields. With a rapidly depreciating currency, a tax levied one day in crowns of a given value could often be paid, perhaps only a few days later, in crowns of a much lower value. The use of thrift crowns, based as they were on stable foreign exchange purchasing power, promised to insure that the Treasury in collecting taxes would receive paper crowns in sufficient amounts to offset any depreciation which might have occurred during the period between levy and collection. Unfortunately, the value of the thrift crown as a stable unit was never adequately tested, for it ended its brief existence on June 24, 1924, when the League of Nations' Reconstruction Scheme for Hungary went into operation.

When in May 1924 Mr. Jeremiah Smith, Jr., of Boston, arrived in Budapest to supervise the execution of the League's program,[13] the Hungarian fiscal machinery was in ruins. In the years which have elapsed since the completion of the reconstruction, Hungary has passed through successive periods of prosperity and depression, which necessitated the adaptation of its taxation system to post-war developments. A fiscal organization framed for a kingdom of twenty-one millions had to be adapted by post-war governments to a country one-third that size. This adaptation was largely the work of 1925-1926, the two reconstruction years. It is the purpose of the pages which follow to describe the result of this reorganization—the tax system of contemporary Hungary.

Hungary's fiscal authority is vested in the Finance Minister, who has wide descretionary powers and not only levies all taxes collected by the national government but supervises those collected by the other autonomous bodies, i. e., counties, free cities, municipalities and certain semi-public institutions.[14] Gener-

[13] Act IV of 1924.

[14] It is the general practice for Parliament to pass a tax law outlining the broad features and entrusting its administration to the Finance Minister, who operates through ministerial decrees.

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ally the mechanics of the system closely resemble those of the French, the state levying taxes on all major bases and the other autonomous bodies being then permitted to add a supplementary levy expressed as a percentage of the national tax.[15] These supplementary taxes may, in a sense, be called derivative taxes, as opposed to primary taxes which are imposed on the basis of original assessments.[16] In addition, the local authorities are permitted to impose certain service charges or benefit taxes. In this manner they collect fire-protection dues, chimney-sweep fees, sanitation taxes, and the like. The division of revenue between the national and the local authorities, which in 1913 was in the ratio of four to one, has gradually shifted in favor of the latter, until today these receive 30 per cent of all public revenue collected in Hungary.

DISTRIBUTION OF PUBLIC REVENUE, 1913-1932

Year	National (In Millions of Pengö)	Local (In Millions of Pengö)	National (Percentages)	Local (Percentages)
1913	561	143	80	20
1927	945	261	78	22
1928	924	310	75	25
1929	869	338	72	28
1930	783	327	71	29
1931	677	313	68	32
1932	658	288	70	30

The revenue of the national and local governments amounted in 1932 to P. 946,000,000. This compares with P. 704,000,000 for that part of Hungary of 1913 which comprises present-day Hungary[17] and with P. 1,717,000,000 for the revenue of the national government of the pre-war kingdom (1913).[18] Direct taxes accounted for 37.6 per cent of the 1913 and 48.0

[15] Generally limited to 50 per cent of the national tax. 600/PM, 1927.

[16] This terminology was suggested by that of C. A. Phillips, in his *Bank Credit* (New York, 1926), pp. 40-44.

[17] Unless specified to the contrary, figures for 1913 refer to that part of the pre-war kingdom which comprises present-day Hungary.

[18] It will be recalled that by the terms of the Treaty of Trianon (1919) Hungary lost two-thirds of its territory and approximately 40 per cent of its national wealth.

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per cent of the 1932 revenue. For purposes of discussion, other Hungarian revenue may be conveniently divided into five categories: turnover or sales taxes, consumption or excise taxes, dues or duties, tariff or customs, and the profits of the government monopolies.

SOURCES OF HUNGARIAN NATIONAL AND LOCAL REVENUE, 1913-1932

	1913	1927	1928	1929	1930	1931	1932
	In Millions of Pengö						
Direct	265	373	441	458	449	466	454
Turnover	....	176	170	144	110	95	104
Consumption	159	132	137	137	127	116	113
Dues and Duties	124	191	156	160	154	139	136
Customs	56	165	152	127	102	78	47
Monopolies	100	170	179	181	168	96	91
Total	704	1206	1235	1206	1110	990	946
	Percentage Distribution						
Direct	37.6	30.9	35.7	38.0	40.5	47.0	48.0
Turnover	....	14.6	13.8	12.0	9.9	9.6	11.0
Consumption	22.6	10.9	11.1	11.3	11.4	11.8	11.9
Dues and Duties	17.6	15.8	12.6	13.2	13.9	14.0	14.4
Customs	8.0	13.7	12.3	10.5	9.2	7.9	5.0
Monopolies	14.2	14.1	14.5	15.0	15.1	9.7	9.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	Per Capita Share (In Pengö)						
Direct	33.7	43.7	51.2	52.9	51.7	53.3	51.7
Turnover	....	20.6	19.7	16.6	12.7	10.9	11.9
Consumption	20.2	15.5	15.9	15.8	14.6	13.3	12.9
Dues and Duties	15.7	22.4	18.1	18.4	17.7	15.9	15.5
Customs	7.1	19.4	17.7	14.6	11.7	9.0	5.4
Monopolies	12.7	19.9	20.8	20.9	19.4	11.0	10.4
Total	89.4	141.5	143.4	139.2	127.8	113.4	107.7

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The Hungarian sales or turnover taxes are a post-war innovation. They were originally introduced in 1921 by Finance Minister Hegedüs, in his frantic effort to increase revenues and interrupt the depreciation of the currency.[19] In general, the Hungarians follow the German practice of taxing commodity transfers as well as commercial and professional services. Unlike the Germans, however, the Hungarians tax all commodities whether of foreign or domestic origin. In this manner imported commodities are taxed at their time of entry. In the past few years, an attempt has been made to follow the Austrian principle of levying a tax, once and for all, at a specific stage of the commodity's introduction into commerce. Thus there is imposed a 4.3 per cent levy on meat at the time of slaughtering, a 3 per cent levy on sugar beets at the time of processing, a tax on the sales of luxuries ranging from 5 to 25 per cent,[20] and a tax on security transactions varying from 2/100 to 15/100 of one per cent of the face value of the security, depending upon the nature of the paper and the transaction.

The sales tax, as originally introduced, was 3 per cent. It was subsequently lowered to 2 per cent in 1925, and raised again to 3 per cent in 1931.[21] The French system was adopted, providing for arbitrary tax settlements with small business units, thus relieving these of the necessity of elaborate bookkeeping and the tax authorities of the task of checking their returns. A unique administrative feature of the Hungarian tax is its provision for the taxing of professional services—not of the professional man individually, but of the association of professional men. These organizations, whose memberships cover all practising professions, pay the tax for the entire profession and then distribute the levy among their members in accordance with their own standards.

The sales tax may be paid either in cash or in stamps. In the latter case, common in retail trade, the stamp is pasted alongside of the book entry recording the sale. The proceeds of the sales taxes have declined from P. 176,000,000 in 1927

[19] Act XXXIX of 1921, # 3; 130,000 PM/1921.

[20] Act XVI of 1920 and Act V of 1927.

[21] Act XXIII of 1925 and XXVI of 1931; 4800/1931 M.E.

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to P. 104,000,000 in 1932. Their share in total public revenue fell from 14.6 per cent in 1928 to 11.02 per cent in 1932. This decline in yield is due partly to the general falling-off in the volume of business and partly to the extension of exemptions. Since 1927 food has been exempt and refunds are granted to commodities which are eventually exported. During the past few years some three hundred commodities have been placed on the export free list. Exemptions can often be secured through bargaining with the fiscal authorities, especially if an export project is involved.[22]

Equal in importance to the sales tax as a source of fiscal revenue are the excise taxes. These are levied on some of the more important necessities which enter commerce on a large scale. In the majority of cases their origin dates back to the latter half of the nineteenth century. The most productive of the excises is the tax on sugar, which produced P. 41,000,000 in 1931 and in excess of P. 43,000,000 in 1932. The tax rate varies with the quality of sugar from P. 12 to P. 50 per 100 kilograms. Other excises are those levied on alcohol, vinegar, beer, yeast, mineral oil, matches, lighters, firestones, cigarette papers and cigarette tubes.

Third in the broad categories of public revenue is that collected in the form of dues, duties and licenses. The most productive of these is the tax on the transfer of property, which varies in rate from one per cent to 30 per cent of the value of the property and produces annually approximately P. 100,000,000. Next in importance is the duty on railway traffic. This levy takes the form of a surtax on the railway fare. The rate varies from 0.5 per cent to 5 per cent and contributed in excess of P. 12,000,000 in 1931. Other dues and duties, especially court duties and those on public documents, contributed an additional P. 25,000,000. In 1932, as an emergency measure, all dues, duties and licenses were increased temporarily 20 per cent.

Comparatively unimportant as a source of revenue but of considerable significance before the collapse of foreign trade

[22] Lenart, Wilhelm, "Das ungarische Steuersystem" in *Ungarisches Wirtschafts-Jahrbuch*, 1927, p. 249.

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were the customs duties. Tariff receipts have undergone the most conspicuous change of all sources of public revenue since the pre-war period. By virtue of the Compromise (*Ausgleich*) of 1867, Austria and Hungary formed a customs union. Trade within the empire was virtually free, but trade with foreign countries was subjected to heavy duties. The tariffs were collected by a common administration and the proceeds were so arranged that after the bounties and tariff refunds were deducted, the balance was devoted to the meeting of the mutual expenses of the two countries.[23] In compensation for their assistance in the collection of customs, the constituent states received a fraction of the customs receipts, the exact amount of which was decided from time to time. Hungary's share in the customs for 1913 was $17,000,000.[24] This arrangement came to an end with the dissolution of the empire in 1918. From that date, Hungary has administered its own tariff and secures normally approximately 10 per cent of its public revenue from this source. Between 1927 and 1932, however, the collections from this source declined 72 per cent from P. 165,000,000 to P. 47,000,000.

Government monopolies in the pre-depression period contributed approximately 15 per cent of all public revenue collected in Hungary but at present are accounting for less than 10 per cent of the total. The monopolies are four in number: salt, tobacco, lottery and saccharine. The first three date from 1868 and the fourth from 1912.[25] Under the terms of the 1924 League of Nations Agreement, the proceeds of these monopolies are set aside for the service of the Reconstruction Loan.

The backbone of the Hungarian tax system, and becoming increasingly significant with the collapse of other sources of

[23] For a more detailed description of this arrangement, see Teleszky's *Hungarian Finances during the War*, p. 39.

[24] The total revenue accruing from customs to the Austro-Hungarian Monarchy in 1913 amounted to 227,500,000 crowns. According to the prevailing quota of 36.4 per cent, Hungary's share amounted to 82,800,000 crowns. To this were added expenses of administration amounting to 7,700,000 crowns, raising the total of Hungary's share to 84,500,000 crowns, the equivalent of P. 97,500,000 or $17,000,000.

[25] Acts IV, XI, XV of 1868 and Act XXII of 1912.

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revenue, is the system of direct taxes. In 1932 these represented 48 per cent of all public revenue and 38 per cent of the revenue of the national government. In general, direct taxation in Hungary consists of a series of impersonal taxes levied at the source and a personal income tax paid by individuals on the whole of their incomes. This closely resembles the Austrian system of direct taxes.[26]

The more important Hungarian direct taxes may be conveniently grouped into four categories: (1) land and house taxes; (2) business and earnings taxes; (3) income and property taxes; and (4) miscellaneous taxes. This list by no means exhausts Hungary's repertoire of direct taxes; it does, however, include the most important ones, and all of those which are collected by the national government. In addition to these, the official tax register lists a great number of minor taxes levied and collected by the various local authorities.

Historically oldest and most productive of the early Hungarian taxes is the land tax *(Grund- or Bodensteuer, Földadó)*. Its prototype was probably the *Censimento Milanese,* introduced by the Austrians in Milan before the reign of Maria Theresa (1718).[27] The land tax is payable by the proprietor of agricultural land, whether cultivated or not, and is based on the cadastral net yield of the soil, as established in the cadastral valuation of the land. The cadastral valuation amounts to a classification, for the purpose of apportioning taxes, in accordance with several variables bearing upon the productivity, quality, value and ownership of the land. Cadastral land registration was originally used by the Romans and adopted by the Austrians in 1812.[28] Hungary, following the lead of Austria, introduced the technique in 1848, on the occasion of its first adoption of land taxes.[29] The registration was brought to a sudden close, however, with the suppression of the new Hungarian Republic by the Austrians, and in 1850 the Viennese

[26] *Cf.* van Sickle, J., *Direct Taxation in Austria* (Cambridge, 1931), p. 232.

[27] Földes, Béla, *Finanzwissenschaft* (Jena, 1920), p. 403.

[28] For a description of types of cadastral valuation and a brief history of their application, *cf. ibid.*, pp. 399-403.

[29] The description of the early Hungarian land tax is based on Fellner, F., in Schanz's *Finanz-Archiv,* 1913, pp. 136-224.

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government ordered a temporary valuation of the land (*Grundsteuerprovisorium*) for taxation purposes. This marks the real beginning of land registration in Hungary. Although the resulting assessments were grossly inaccurate and unjust, they were retained in 1867 when Hungary regained its independence and it was not until 1875 (Act VII) that the land tax was revised and the cadastral yield recalculated.

The act of 1875 provided for: (a) the accurate geographical survey of the whole country by the triangulation method;[30] (b) the classification of the soil in accordance with branches of cultivation and degree of fertility;[31] and (c) the assessment of land taxes on the basis of the average net income of each branch and class of fertility. With the exception of a hasty revision in 1909,[32] the cadastral registration of 1875 remained unchanged and after the World War became the heritage of the various Succession States.[33]

Originally the first step in land taxation was to determine by parliamentary action the amount of the annual land levy, irrespective of land yields or land values. The amount thus prescribed was then apportioned in lump sums to geographical areas and it fell to the local assessors to distribute the quota among the landowners in their districts, on the basis of the total cadastral net income of their holdings. At present the tax is imposed as a fixed percentage of the assumed cadastral net yield of the individual plots of land.

The land tax, as revised during the Reconstruction of 1924, called for a levy of 25 per cent on the net cadastral yield of the soil.[34] Following the collapse of agricultural prices, in

[30] For description of the survey technique, see van Sickle, *op. cit.*, pp. 6-10.

[31] There were seven branches of cultivation, i. e., plowland, garden, meadow, vineyard, pasture, forest and reed, with eight grades of fertility in each, making a total of fifty-six specific tax categories.

[32] Act V of 1909.

[33] The cadastral valuations were taken over as the basis of the land tax by all the countries to which territories were transferred from the Hungarian Kingdom. For its adaptation in Yugoslavia, for example, *cf.* Kurilo, Gregor, "Katastergesetz und Erganzungen zum gesetz der direkten Steuern in Jugoslavien" in Schanz's *Finanz-Archiv*, 1930, pp. 760-82.

[34] 100 PM/1927.

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order to lighten the burden of the agricultural classes, the rate was reduced to 20 per cent in 1929-30.[35] When in 1931-32 and 1932-33, in the effort to balance the budget, almost all the other taxes were increased, the land tax remained unchanged. This fact accounts for both the relative and absolute decline of

CADASTRAL VALUATION OF PRESENT-DAY HUNGARY

(As of December 31, 1932)

Branch of Cultivation	Area in Cadastral Acres *	Cadastral Net Yield	Cadastral Net Yield per Acre		Land Tax per Acre
	(In Thousands)	(In Thousands of Gold Crowns)†	Gold Crowns	Pengö	In Pengö
1. Plow land..	9,699.0	111,184	11.46	13.29	2.66
2. Garden....	189.6	3,557	18.76	21.76	4.35
3. Meadow...	1,156.0	11,125	9.62	11.16	2 23
4. Vineyard ..	367.9	8,016	21.78	25.26	5.05
5. Pasture....	1,728.5	5,675	3.28	3.80	0.76
6. Reeds.....	53.7	416	7.74	8.98	1.80
7. Forest.....	1,900.1	4,414	2.32	2.69	0.53
Total	15,094.8	144,387	8.95	10.38	2.08

* A cadastral acre (*hold*) = 1.43 English acres.

† 1 gold crown = P. 1.1585 = $0.2026.

this source of revenue (as shown in table, page 83).[36] For purposes of comparison it may be well to point out that while in 1868 land taxes accounted for 64.1 per cent of all revenue derived from direct taxes, their share in 1932 had declined to 11.3 per cent of state and local direct taxes and 2.93 per cent of all public fiscal revenue.

Exemptions for a period of fifteen years are granted to landowners for reclaiming land, that is, improving it by drainage, irrigation, etc. Immediate exemptions are available if crops are destroyed by such natural elements as hail, frost, insects

[35] Act XXIII of 1929.

[36] Hungary is largely an agricultural country. Fellner estimates that agriculture accounts for 43.06 per cent of Hungary's national income, and agricultural land, for 32.41 per cent of Hungary's national wealth. *Cf.* Fellner, F., *The National Income of Hungary* (Tokio, 1930), and *National Wealth of Dismembered Hungary* (Budapest, 1929, in Hungarian).

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or rust. The value of exemptions granted on this score compares as follows:

1926	P. 2,130,969	1930	P. 960,000
1927	1,465,088	1931	1,623,000
1928	1,107,515	1932	2,120,000
1929	798,000		

The proceeds of the land tax proper accrue to the national government, but the local authorities are permitted to impose their own supplementary or derivative taxes. In 1927, on the basis of the then prevailing tax rate, it was estimated that the land tax and its supplements consumed approximately 44 per

LAND TAX YIELD

	Total in Thousands of Pengö	Percentage of State Revenne	Percentage of All Public Revenue	Per Capita Burden in Pengö
1913	33,017	5.89	4.70	4.19
1927	41,755	4.42	3.46	4.90
1928	38,894	4.21	3.14	4.52
1929	37,766	4.24	3.13	4.36
1930	31,191	3.98	2.81	3.59
1931	29,367	4.34	2.97	3.36
1932	27,696	4.21	2.93	3.15

cent of the cadastral net yield of the soil.[37] It should be pointed out, however, that as the cadastral net yield does not even approximate the real yield of the soil (it is, in fact, normally estimated to be one-fourth of the real yield, although as a consequence of the drop in agricultural production it is said to have increased to one-half), the burden of the tax is much smaller than would appear at first glance.[38] The cadastral yield is approximately 2½ per cent of valuation, so that the land tax probably amounts to about one per cent of the value of the land,[39] a burden which when compared with that borne by land in America seems very light indeed.

[37] Lenart, Wilhelm, in *Ungarisches Wirtschafts-Jahrbuch*, 1927, p. 242.

[38] According to Teleszky, it does not aim at ascertaining total revenue but rather relative revenue of different categories of land. *Op. cit.*, p. 28.

[39] Placing the national income at P. 3,000,000,000, Dr. Szegö estimates that the land tax consumes from 1½ to 2 per cent of it. *Cf.* Szegö, Ernst, in *Ungarisches Wirtschafts-Jahrbuch*, 1928, p. 266.

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One notable feature of the land tax is its complete disregard for year-to-year fluctuations in the quantity or the value of the yield of the soil, except for the special relief in case of the destruction of crops by hail, insects, etc., mentioned above.[40] It is an impersonal and inflexible levy imposed on property, on the basis of what that property is expected to yield and is not concerned with the use that is actually made of the land. Because revaluations are very infrequent, it serves to favor the large and progressive landowners, in that any additional revenue they derive from the soil as a result of more intensive cultivation and utilization of modern machinery does not operate to increase the land tax.[41]

The present Hungarian house tax (*Haussteuer, Házadó*) is of comparatively recent origin. It is, however, the direct lineal descendant of the old buildings tax, originally taken over from Austria in 1849.[42] The buildings tax consisted of two parts: a rent tax (*Hauszinssteuer*) on buildings in urban centers, and a classified house tax (*Hausklassensteuer*) on those in rural districts.[43] The former was imposed as a percentage of the gross rental, either actual or estimated, while the latter was levied on the basis of the number of rooms in the house. The differentiation had its origin in the circumstance that in country districts most of the homes were occupied by their

[40] *Cf. supra*, pp. 82-83.

[41] Hungary is a country of comparatively large land holdings. In 1930 its agricultural area was held as follows:

Size of Holding	*Number of Units* *	*Area (Holds)*†
1–50 holds	1,568,266	7,501,531
50–100 holds	15,130	1,040,904
100–200 holds	6,274	872,144
200–500 holds	4,361	1,364,340
500–1000 holds	1,971	1,374,932
Over 1000 holds	1,644	3,778,567
Total	1,597,646	15,932,418

* When an estate falls in two counties, it is counted twice.

† Hungarian unit which is the equivalent of 1.43 English acres.

[42] For a description of the Austrian buildings tax, see van Sickle, *op. cit.*, p. 232.

[43] *Cf.* Fellner, F., *op. cit.*, pp. 136-224.

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owners and provided no basis for estimating rental values. The definition of buildings falling under each tax varied from time to time.[44]

The rental tax system, though on the whole fairly productive, was grossly inequitable. The burden of the urban rent tax was five or six times heavier than that of the rural classified house tax.[45] In addition, the latter made no allowances for qualitative differences,[46] although the scale was rapidly progressive as the number of rooms in a house increased. Consequently in 1875 Law XXIII introduced a three-fold rate scale in the classified tax, on the basis of location and value of the property.[47] In 1909 the burden of the two taxes was brought into closer harmony by lowering the rent tax and raising the classified tax. The system then prevailed until the revision of Hungarian direct taxes in 1922, when the classified house tax was discarded,[48] and the present house tax introduced.[49]

The Hungarian statutes define the present house tax as one "levied on every dwelling house and other house of permanent character resting on the ground".[50] In practice it amounts to a tax on business and residential buildings other than those used for agricultural purposes, since permanent exemptions are granted to factory, farm, governmental, religious, educa-

[44] Act XXII of 1868, Act XXIII of 1875, Act VI of 1909. In 1913 all rented buildings and all buildings in those localities of 15,000 inhabitants in which at least half of the houses were rented were subject to rent tax.

[45] Van Sickle asserts that this led to congested and unsanitary living conditions in Austrian cities. *Op. cit.*, pp. 14-17.

[46] According to the Act of 1868, the presence of a place of business in a building subjected it to a 100 per cent increase in its classified house tax, irrespective of how small or unimportant that place of business was. This was changed in 1875 so that business buildings were no longer called upon to pay a double tax but were assessed a definite surtax.

[47] In 1913 the lowest classified house tax in the smallest village was 1.50 crowns; the highest was in Budapest in a 15-apartment house, 150 crowns. Teleszky, *op. cit.*, p. 29.

[48] There were of course several emergency measures introduced during the war, but these were only temporary in nature.

[49] Act XXII of 1922.

[50] Decree 200/PM, 1927; Act XXII of 1922; Acts II, XXIII and XXIX of 1929.

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tional, diplomatic and railway buildings, and to the premises occupied by the industrial enterprises of the government itself.

The tax base is the annual income calculated on the basis of the last quarterly rental payment preceding the tax year, without allowances for repairs or interest charges. If part of the rent is paid in kind, rental value is estimated on the basis of market price [51] and if the house is occupied by the owner, the rental value is appraised on the basis of adjoining rentals. The tax rate is 17 per cent in Budapest, 16 per cent in other cities, and 14 per cent in the villages. This differentiation is historical in development and was considerably sharper before the war.

HOUSE TAX REVENUE

	Total (In Thousands of Pengö)	Per Capita Burden (In Pengö)	Percentage of State Revenue	Percentage of All Public Revenue
1913	35,023	4.45	6.24	4.98
1927	57,892	6.79	6.13	4.80
1928	68,255	7.93	7.38	5.54
1929	68,162	7.86	7.85	5.65
1930	73,380	8.45	9.38	6.61
1931	82,899	9.49	12.25	8.37
1932	89,257	10.17	13.57	9.44

The house tax, which before the war was Hungary's third most productive direct tax,[52] declined in significance during the war and the immediate post-war years. This trend was reversed during the post-reconstruction period, in spite of the fact that there were two rate reductions between 1926-27 and 1930-31.[53] The sharp increase in house tax revenue in recent years is explained by the removal of rent restrictions. During the war the government found it advantageous to restrict increases in rents. Consequently rents did not keep pace with the rise in the general price level. By the terms of Reconstruction Law IV of 1924 these restrictions were to be gradually removed after 1926. At the end of 1931 approximately

[51] If the gross rental includes charges for heat, light or furniture, the value of these is subtracted from the tax base, the allowance for furniture being limited to 30 per cent of the gross rental.

[52] Fellner, *op. cit.*, gives annual statistics.

[53] Act V of 1927 and II of 1929.

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40 per cent of all rented lodgings were still subject to rent restrictions. By November 1932 this proportion had been reduced to 26.2 per cent. The removal of these restrictions continues to offset the effect of falling rentals on house tax revenue.[54]

In 1925, with a view to stimulating construction activity, the government renewed the pre-war practice of granting exemptions from the house tax to owners who built new houses, rebuilt or extended old houses, or transformed buildings so as to make them suitable for lodging or commercial purposes. Exemptions were granted for a period of 30, 25, 20 and 15 years, as the buildings were ready for occupation in 1927, 1928, 1929 and later years, respectively.[55] The fifteen-year exemption continues to be granted. Special tax reductions, varying in accordance with the outlay, are also available for the repairing of houses. Furthermore, temporary exemptions are granted if the house becomes unlivable, is not occupied, or the rent is unpaid. Tax exemptions have increased gradually during the post-reconstruction period and at present affect approximately 25 per cent of the tax rolls.

HOUSE TAX EXEMPTIONS

	Gross Rental Value Before Deductions	Value of Exemptions	Rental Subject to Tax
	(*In Thousand Pengö*)		
1926	266,432	27,049	239,383
1927	358,851	38,694	320,156
1928	467,676	54,813	412,863
1929	554,523	77,190	477,333
1930	593,096	106,210	486,886
1931	601,920	117,574	484,346
1932	589,853	121,787	468,066
1933	549,983	121,688 (p)	428,295

(p) Preliminary.

[54] Between 1925 and 1933 the number of lodgings rented under rent restrictions declined from 306,308 to 101,049 (preliminary). As a result of these restrictions the 1925 cost of living index not including rent exceeded that giving due weight to the item of rent by 21 per cent. With the elimination of rent restrictions the discrepancy between the two indexes has virtually disappeared.

[55] In the pre-war period exemptions ranged up to 30 years. Teleszky, *op. cit.*, p. 29.

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In addition to the house tax, which accrues to the state, buildings in Hungary are subject to local supplementary taxes, which are imposed on the basis of the returns for the state house tax and are levied as a percentage of the house tax. Conspicuous among these is the luxury house tax which local authorities may impose on houses large in proportion to the number of occupants, the criterion being legally defined as "too much comfort". It may not exceed 60 per cent of gross rental and is payable by the occupant of the house.

Present Hungarian business taxes fall into two categories: taxes on corporations and those on unincorporated enterprises. For the legislative history of Hungarian business taxes it is necessary to begin with 1875.

In that year the ineffective and discriminatory personal earnings tax *(Personalerwerbssteuer)* was replaced by a triple schedule of business taxes: the general earnings tax *(Erwerbssteuer)*,[56] the corporation tax *(die Steuer der zur öffentlichen Rechnungslegung verpflichteten Gesellschaften und Vereine)*, and the tax on the profits of mines *(Bergwerkssteuer)*.[57] The features of these taxes remained unchanged during the fiscal revisions of 1909 and 1912 [58] and were inherited by post-war Hungary with only minor changes.

Related to the business taxes (by virtue of a common origin) and in fact levied and collected with them, are the historically older earnings taxes. These are three in number: (1) the *tantième* tax on the salaries of the managing staff of corporations; (2) the tax on the earnings (salaries and wages) of all employees of business enterprises other than those subject to the *tantième* tax; (3) the special tax on employees falling on

[56] Act XXIX of 1875; earnings taxes were divided into four categories, the first of which, payable by artisans, day laborers, etc., were really head taxes in nature, ranging from 1.2 to 24 crowns depending upon occupation and size and importance of locality. (Teleszky, *op. cit.*, p. 29.)

[57] Act XXVII of 1875. Rate was 7 per cent for coal mines and 5 per cent for other mines. The separate classification for mines (previously reached by the income tax) amounting in effect to a lowering of the tax rate, represented merely one additional form of state encouragement of industrialization.

[58] Acts VIII and IX of 1909 and LIII of 1912, *cf.* Fellner, *op. cit.*, pp. 135-140.

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those subject to the *tantième,* or employees earnings tax. Their history began in 1850 when, following the suppression of the Hungarian revolution, the Austrians imposed on Hungary some of their own fiscal methods. The so-called personal earnings tax of 1850 *(Personalerwerbssteuer)* was an earnings tax in name only. In practice it amounted to a per capita levy without regard for occupation, wealth or income, on the theory that everyone over the age of sixteen was indebted to the state, regardless of his earning capacity.[59] The tax on day laborers and house servants was the liability of employers; the former of these was ultimately abandoned because of difficulties of collection. Although the earnings tax worked grave injustice, it was retained during the general tax revision of 1868 because of its productivity [60] and remained unchanged until 1875.

The present Hungarian corporation tax (*társulati adó*) and its complement, the *tantième* tax, or tax on directors' fees, are payable by: [61] (1) joint stock companies, limited liability companies, coöperative societies,[62] mining companies and savings banks; and (2) by the industrial enterprises of the state and local governments, other than the state railways. Domestic corporations doing an international business are liable only on that part of their profits which accrues from Hungarian business. In practice, only a small fraction of the foreign concerns pay the corporation tax, since the Finance Minister, in his eagerness to encourage the immigration of foreign capital, has granted them extensive exemptions. In this manner not only is international double taxation avoided but foreign corporations are frequently enabled to escape completely from taxation on their Hungarian business.

In the early corporation taxes a flat rate was imposed, which, however, ranged from 6 to 10 per cent, depending upon the

[59] Fellner *op. cit.*, p. 141, quotes the imperial decree as saying: "Alle Bürger des Staates haben von ihrem persönlichen Erwerb mit einem entsprechenden Teile desselben zu den Bedürfnissen des Staates beizutragen."

[60] During the 25 years 1851-1875, it produced approximately six million florins annually. *Cf.* Fellner, *op. cit.*, p. 155.

[61] 400 PM/1927; Act XXIV of 1922; Act V of 1927.

[62] Including insurance companies.

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nature of the undertaking. This practice survived until 1916 when progressive rates were introduced as a war measure.[63] The present tax is an excess profits tax, the schedule of rates being based on the relationship of earnings to invested capital as revealed by the balance sheet and profit-and-loss account, the publication of which once a year is required of all Hungarian corporations.[64]

The law requires that all corporations file annual statements of their taxable profits.[65] The statutes prescribe the computation of the relationship of net earnings to invested capital at great length. Capital proper is defined as paid-up capital plus reserves made up of profits already taxed. Corporations are permitted to establish pension reserves for their employees, cumulative reserves for maintenance [66] and emergency reserves for uncertainties. Insurance companies may establish pre-

[63] Földes, *Finanzwissenschaft*, p. 532. (Act XXXIV of 1916.)

[64] The preparation of the *profit and loss* accounts is prescribed by law. Since after the war the Hungarian crown depreciated to 1/16,000 of its pre-war value, commercial balance sheets became entirely distorted. The enterprises which were required to publish periodic statements were compelled during the inflation period to show the various items of their assets at their original value, lest the difference arising out of the depreciation of the crown—apparent profit—be liable to the payment of a tax. Following the stabilization of the currency in 1925 and in accordance with the Reconstruction Act of 1924, the Finance Minister issued decrees No. 4200 and 7000 PM/1925, providing for the restoration of balance sheets to conformity with the actual state of things. To encourage the making of correct balance sheets, earnings revealed for the first time were made free of any form of taxation and in the future were to be regarded as part of the operating capital of the enterprise. The corporations were given absolute freedom in the disposition of their assets. These could be added to capitalization, reserves or dividends with only minor limitation. The government, however, insisted that the values entered in the balance sheet be not excessive with a view to hiding earnings in the future. *Cf. Economic Bulletin* of the Central Corporation of Banking Companies, Budapest, 1926, pp. 16-17 and 1928, pp. 51-53. For a comparison of the treatment of the balance sheet problem created by the inflation in Germany, Austria and Hungary, *cf.* Katona, Ludwig, "Die Goldbilanz in Ungarn", in *Ungarisches Wirtschafts-Jahrbuch*, 1926, pp. 261-283.

[65] Before the war the rate was imposed on the basis of a three-year average with exemptions for profit derived from tax-free securities, with the result that the large financial institutions which held tax-free securities paid no corporation tax at all. Teleszky, *op. cit.*, p. 30.

[66] Mines are permitted an annual depletion of 2 per cent and industrial enterprises an annual depreciation of 10 per cent.

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mium reserves. Unpaid accounts may either be deducted from the tax base, or a reserve fund may be established for that purpose. No deduction is allowed for charitable gifts, investments or increase of capital.

The corporation tax rate on profits of commercial companies below 10 per cent is 16 per cent, and 18, 20, 22, 24, 26, 28 or 30 per cent as the rate of profits on their capital exceeds 10, 15, 20, 25, 30, 35 or 40 per cent, respectively. Coöperative societies are liable to a flat rate of 10 per cent on profits unless these exceed 6 per cent of their capital, in which case they are subject to the above rate for commercial companies.[67] A third rate structure applies to the industrial enterprises of the state and local governments (other than the exempt state railways), since in their case no invested capital figure is ascertainable. Their rate is 5 per cent on annual profits below P. 6,000 and a progressive scale of rates from 6 to 15 per cent as the total net profit ranges from P. 6,000 and exceeds P. 60,000.[68] In addition, all corporations pay the *tantième* tax on fees paid to members of the managing and supervisory staffs for work performed in that capacity. The rate is 16, 20 and 25 per cent as the totals of such fees amount to less than P. 3,000, more than P. 3,000 but less than P. 10,000, or more than P. 10,000.[69]

Partly because of inefficient collection [70] and partly because of the relative unimportance of corporate enterprises in Hungary, corporation taxes remain a very unimportant source of public revenue.[71] This is revealed by the following table:

[67] Coöperative societies received favored treatment before the war.

[68] As part of the emergency legislation in 1932-33, the corporation tax was increased 25 per cent and 40 per cent (2030/1932 M.E. and 1390/1933 M.E.). At the same time Hungary adopted the pre-war Austrian practice of making every corporation subject to a minimum tax of 0.2 per cent of capital in the absence of any profit. (2030/1932 M.E.)

[69] Act XLVII of 1930.

[70] One well-informed economist in Hungary testified that evasion of the business tax amounted to about 40 per cent.

[71] In view of its efforts to encourage industry and attract foreign capital, Hungary has followed the Austrian example (1920) of granting exemptions from the corporation tax to new capital invested in manufacturing industry at a fixed rate of interest (*cf.* van Sickle, p. 113). Before and after the war exemptions up to 15 years were and are granted to new capital for purposes of developing industry and commerce (Teleszky, *op. cit.*, p. 13).

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CORPORATION TAX REVENUE

	Total Tax Revenue (In Thousand Pengö)	Per Capita Revenue (In Pengö)	Per Cent of All Revenue Collected By	
			State	All Authorities
1913.....	14,377	1.82	2.56	2.04
1927.....	13,404	1.57	1.42	1.11
1928.....	19,863	2.31	2.15	1.62
1929.....	21,186	2.44	2.55	1.76
1930.....	21,275	2.45	2.72	1.91
1931.....	16,023	1.83	2.37	1.62
1932.....	14,608	1.66	2.22	1.54

Inquiries made of administrative officials in Budapest revealed a surprising lack of concern regarding difficulties (such as the determination of the amount of the invested capital) which in England and the United States are generally considered so serious as to make an excess profits tax practically unavailable except as a war tax. Whether this attitude is traceable to the relatively moderate scale of rates in Hungary, to the relative simplicity of the business structure, or to mere indifference, could not be satisfactorily determined. In any case, it is interesting to note that Hungary is one country in which in peace time an excess profits tax is being imposed as a part of its regular and normal tax system. Corporations pay no property taxes, but dividends paid by them are subject to the income and property taxes levied on their stockholders. In addition to the corporation and *tantième* tax, corporations are subject to road taxes, municipal derivative taxes, and Chamber of Commerce duties.

Corresponding to the above corporation taxes, Hungary imposes a general tax on the earnings of unincorporated enterprise.[72] The earnings tax falls on any legal person who participates in a business or a profession and whose earnings have not already been subject to either the land, house or corporation tax.[73] The tax, furthermore, is intended to reach income

[72] 300 PM/1927.

[73] It is similar to the Austrian *Allgemeine Erwerbssteuer* (*cf.* van Sickle, *op. cit.*, p. 18).

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derived from annuities, royalties and patent monopolies. As opposed to the corporation tax, the general tax on earnings is a proportional tax and accrues to the local authorities, although like the corporation tax it is levied by the state. The tax rate is 5 per cent, which may be raised to a maximum of 10 per cent with the sanction of the Finance Minister if the local authorities can prove that they are particularly pressed for funds.

The tax falls on net earnings as declared in February of each year. Fresh declarations need not be made annually on incomes less than P. 10,000; in their case the preceding year's tax base is acceptable for another year.[74] In estimating the net income subject to the earnings or business tax, allowance is made for repairs, depreciation, depletion,[75] losses incurred the previous year, bad debts, other taxes falling on the enterprise, and the interest charges on obligations contracted for the benefit of the business. No deduction is made for capital outlays, liquidation of debt or increase of inventory, and no additions are made to the tax base in case of an increase in the value of the business enterprise.

Permanent exemptions are granted to the industrial enterprises and monopolies of the state and local governments, to members of the Royal House, to the Regent, to members of the legislature on incomes derived from government service, and to recipients of state pensions and benefits.[76]

Next in order is the employees tax on salaries and wages (*Alkalmazottak kereseti adója*) falling on the salaries and pensions of all employees other than those subject to the *tantième* tax.[77] The tax is based on the total of salaries and pensions received within the tax year. The rate rises gradually from P. 0.10 on weekly salary of P. 20 to P. 56 on weekly salary of P. 700. After that the rate increases P. 3.75 on each additional P. 50 of weekly income. Annual salaries under P.

[74] Both the taxpayer and the authorities may, of course, arrange for a new assessment.

[75] Two per cent depletion allowance in case of mines.

[76] Peddlers pay a fixed tax on earnings, ranging from P. 8 to P. 12 annually, depending upon whether they work on foot or with a team. Foreign traveling salesmen pay an annual tax of P. 20, which is collected in advance.

[77] Act V of 1927; 300 PM/1927.

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960 are exempt. The interesting feature of the employees tax on earnings, as well as of the *tantième* tax, is its collection at the source. In both cases the employer is responsible for the tax, there being no direct assessment. The employer is bound to deduct the amount from the employees' compensation and turn the amounts over to the local authorities.

Last in this category of business and earnings taxes is the special tax on the earnings of employees. This was first introduced in 1930 as an emergency measure. The payment of the above employees tax on earnings or the *tantième* tax establishes liability. It is based on the same income as that on which these two taxes are paid. Incomes not exceeding P. 120 a month are exempt. The rate rises gradually from P. 0.80 a month on a monthly income of P. 120 to 10 per cent on a monthly salary of P. 9,500 or more. The employer is responsible for the deduction and payment of this tax; there is no direct assessment. It yielded P. 19,400,000 in 1931 and P. 23,000,000 in 1932.

The Hungarian income tax, in the sense in which it is used today, dates from 1909.[78] The term itself appears in Hungarian tax legislation as early as 1850, but its connotation at that time differed greatly from the present one. The *Einkommensteuer* of 1850 was not a tax on net income, but a combination levy [79] resembling in many ways William Pitt's income tax of 1798.[80] During the years 1851-1867 it accounted for only 8 per cent of revenue derived from direct taxes.[81] It was retained, however, during the fiscal reorganization of 1868, because of its relative productivity and because, in Fellner's language, "the income tax was satisfactory enough under the circumstances"; [82] and it was only in 1875 that it was replaced

[78] Act X of 1909; Act XXVI of 1916; 500 PM/1927.

[79] "Ein kombiniertes System der Besteuerung des reinen, rohen, erhofften Einkommens einerseits, des durchschnittlichen Einkommens mehrer Jahre anderseits", Fellner, *op. cit.*, p. 142.

[80] *Cf.* Hill, J. A., "The English Income Tax", in *Economic Studies* of the American Economic Association, 1899.

[81] Fellner, *op. cit.*, p. 155.

[82] "Die Einkommensteuer entsprach genügend den Verhältnissen."

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by the *allgemeine Einkommensteuerzuschlag.*[83] This was no more of an income tax than its predecessor, but was really a surtax, which owed its existence to the fact that the other sources of fiscal revenue were in part whittled away in the continuous process of tax revisions.[84] Confronted with a revenue deficiency, the government introduced this surtax, a proportional levy on all produce taxes, i. e., the land, house, corporation, mining and interest taxes.

One of the significant features of the reform of 1909 was its discarding of the *Einkommensteuerzuschlag* and the substitution of the present income tax.[85] Although enacted in 1909, the income tax was not collected until 1914 and then only as a temporary war measure. It was made permanent in 1916,[86] increased on several occasions during the war, and finally in 1925 enacted into the basic tax structure of post-war Hungary.[87]

The Hungarian income tax *(jövedelemadó)*, payable by individuals and natural persons other than corporations,[88] falls on net family income received during the preceding year, irrespective of its source. It accrues to the national government and is assessed on the basis of returns filed in February of each year.[89] For income tax purposes, net income is defined as gross revenue minus necessary expenses incurred in the earn-

[83] Act XLVII of 1875.

[84] Fellner, *op. cit.*, p. 152. One is reminded of J. A. Hill's description of the English income tax: "It has served as a sort of regulator or adjustable element, by means of which a close correspondence between revenue and expenditure can be readily maintained", in Charles J. Bullock's *Selected Readings in Public Finance* (Boston, 3d ed., 1924), p. 393.

[85] Act X of 1909 and Par. 44 of Act LIII of 1912; it was modeled after Prussian, Swiss and Austrian personal income taxes. (Teleszky, *op. cit.*, p. 283.)

[86] Földes, *Finanzwissenschaft*, pp. 449, 532.

[87] Act XXVI of 1916; Act XXIII of 1920; Act XXXIII of 1923; 500 PM/1925; 500 PM/1927.

[88] The Act of 1909 made corporations subject to both the corporation tax and the income tax. This was changed in 1914. *Cf.* Földes, *op. cit.*, p. 428.

[89] Persons with incomes not exceeding P. 10,000 are exempt from filing returns every year, with the result that in the past few years about two-thirds of the income taxes were based on new assessments.

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ing of said income and minus interest on borrowed capital.[90] If the taxpayer owns the house in which he lives, an estimate of the annual rental value must be included in the tax base. Since family, rather than individual income constitutes the tax base, the head of the family is liable for the tax on his wife's and dependents' income as well as his own. Resident Hungarians and foreign citizens residing in Hungary for over a year pay the tax on all their income; non-resident citizens, on that part of their income which originates in Hungary. Where it can be demonstrated that income earned in a foreign country has already been subject to taxation in its country of origin, such income is exempt providing reciprocity agreements exist between the two governments.

Deductions and exemptions are numerous. Frequently the taxpayer is permitted to subtract from his tax base the amount of taxes and fees paid the preceding year to state and local governments or to industrial and religious associations. The granting or refusing of this deduction is, however, subject to the discretion of the tax authorities, whose attitude in each case is governed by the degree of coöperation accorded them by the respective taxpayer. For example, under this remarkable arrangement, the tax administrator is authorized to deny the deduction in case the income tax return was not filed voluntarily and promptly, or if there were any questionable items in the return! The deduction from the income tax base of the current year of the income tax of the previous year is a privilege which must be taken into consideration in comparing the rate scale of Hungary with that of the United States or of other countries where such deductions are not permitted. In effect, it reduces the apparent rate very materially, particularly in the case of large incomes. Losses incurred the previous year may be offset against profits of the current year. No deductions can, however, be made for charitable gifts, donations or investment operations.

[90] Laky Géza points out that in comparison with the German, the Hungarian law is very brief and incomplete in its discussion of the allowances which may be made in the tax base for expenses incurred in the securing of the income. *Cf.* "A német és a magyar jövedelemadó rendszere", in *Közgazdasági Szemle*, 1931, pp. 541-580.

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Complete exemption is granted the King, the Queen, and the diplomatic representatives of foreign governments, while the Regent, members of Parliament, government employees and recipients of state pensions are exempt on that portion of their income which accrues from the state. An income of P. 1,000 (including tax-exempt income) establishes a liability. When an individual has both taxable and tax-exempt income, the tax is payable on taxable income in excess of P. 600. Exemptions are allowed for profits from the sale of real estate, if not of a speculative nature,[91] as well as for gifts received, inheritances, lottery winnings and insurance benefits.

The rate structure is very complex. Two sets of rates exist, one being 10 per cent higher than the other. The lower schedule of rates ranges progressively from 1 per cent on incomes of less than P. 1,200 to 40 per cent on incomes in excess of P. 1,200,000. This schedule of rates applies to individuals with two dependents, to individuals with more than two dependents having an income in excess of P. 6,000, and to clergy. The higher schedule of rates applies to those who have fewer than two dependents. Deductions for additional dependents vary with the size of the income, and with the number of such dependents. In the case of individuals with an annual income of less than P. 4,000, a P. 100 deduction from the tax base is permitted for the third, the fourth and the fifth dependent, P. 200 for the sixth and seventh dependent, and P. 300 for each additional dependent. In the case of individuals with incomes ranging from P. 4,000 to P. 6,000 this scale of allowances is doubled. Individuals with more than P. 6,000 are permitted no deductions for dependents but, as already indicated, are subject to the lower of the two rate schedules in the event that they have more than two dependents.

The tax falls on incomes which have already been subjected to other taxes, the business, *tantième,* earnings, house and land taxes. Just as in the case of the English income tax, the

[91] Under the arrangement in force in 1931, gains from the sale of real estate were exempt only if the property was held less than two years. This practice is exactly the reverse of the rule which obtained in the United States under the Civil War Income Tax.

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statutes contain separate provisions for each category of income, not for purposes of setting rates but for purposes of making assessments.[92] Specific regulations exist for the assessment of income from agriculture, buildings, commerce, capital and household service. In the case of house-owners, the tax base is gross rental, with allowance from 5 to 10 per cent for maintenance and repairs. These limits may be exceeded under exceptional circumstances. The tax base for landowners is not the cadastral net yield, which amounts, as we observed above, to approximately 25 to 50 per cent of the actual yield, but is separately assessed each year, on the basis of net agricultural profit determined by prevailing market prices. If the subject of the income tax coincides with that of the general business or earnings tax, then the base of the latter is accepted for that of the former.

The significance of the income tax as a source of fiscal revenue has increased during recent years. This occurred simultaneously with a sharp contraction in incomes, because of

INCOME TAX REVENUES

	Total (In Thousands of Pengö)	Per Capita (In Pengö)	Percentage of State Revenue	Percentage of All Revenue
1913.....	21,917	2.78	3.91	3.11
1927.....	45,043	5.28	4.77	3.74
1928.....	44,955	5.22	4.86	3.64
1929.....	44,213	5.10	5.09	3 67
1930.....	42,189	4.86	5.39	3 80
1931.....	45,992	5.26	6.79	4.64
1932.....	43,449	4.96	6.61	4.60

the imposition of various emergency levies.[93] The income tax yielded P. 45,000,000 in 1927, P. 42,000,000 in 1930, and as a result of emergency levies, increased to P. 46,000,000 and P.

[92] Hill (*cf.* Bullock's *Readings*, p. 396) remarks: "It would seem that those who framed this measure of taxation came to the conclusion that that process of assessment which was calculated to produce the best results when applied to one form of income could not, without more or less modification, be as advantageously applied to another."

[93] 100 per cent in 1931-32 and 30 per cent in 1932-33 and 60 per cent in 1933-34. 5300/1931 M.E., 2030/1932 M.E., and 1390/1933 M.E.

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43,000,000 in 1931 and 1932 respectively. During the last two years, it accounted for approximately 6.7 per cent of all state revenue and 4.6 per cent of all public revenue collected in Hungary.

During the recent period of income contraction there has been a marked reallocation in the proportion of income tax revenue contributed by the various categories of income. In 1928, when the income tax base for the country amounted to P. 1,371,500,000, agricultural income represented 32.4 per cent of the total tax base. By 1932 agriculture's share had declined to 22.0 per cent. There was a similar contraction in the share of business earnings. These declined from 30.8 per cent in 1928 to 24.7 per cent in 1932. The contraction in the relative importance of agriculture and business incomes resulted in the increase of relative importance of building rentals and personal services. As may be seen from the accompanying table, between 1928 and 1932 these increased from 14.1 to 23.3 per cent and from 19.8 to 26.4 per cent respectively. There were minor upward shifts in the significance of the tax on earnings derived from capital investments.

DISTRIBUTION OF INCOME TAX BASE, AS REVEALED IN REVISED ASSESSMENT

	1928		1930		1932	
	Millions of Pengö	Per-centage	Millions of Pengö	Per-centage	Millions of Pengö	Per-centage
Agricultural Income	443.9	32.4	382.3	27.2	264.1	22.0
House Rental Income. ...	193.2	14.1	273.1	19.4	280.7	23.3
Income subject to General Earnings Tax	422.3	30.8	367.4	26.2	296.4	24.7
Income subject to Tantième Tax	11.4	0.8	14.3	1.0	11.1	0.9
Income of Personal Service	271.0	19.8	337.6	24.0	317.3	26.4
Income from Capital.....	16.5	1.2	19.2	1.4	21.7	1.8
Miscellaneous Income.....	13.2	0.9	11.9	0.8	11.1	0.9
Total	1371.5	100.0	1405.8	100.0	1202.4	100.0
Deductions and Exemptions	118.3	....	199.0	....	249.2	
Net Tax Base	1253.2	....	1206.8	....	953.1	
Income Tax Assessment...	47.2	....	44.4	....	31.6	

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Recent years have witnessed a contraction in the number of individuals[1] paying income taxes.[94] In 1928 their number amounted to 342,000 or 4 per cent of the population; subsequently it declined to 325,000 in 1930 and 281,000 or 3.2 per cent of the population in 1932. Dividing all income taxpayers into two categories, those with annual incomes under P. 10,000 and over P. 10,000, we find that the contraction has been more marked in the upper bracket, where a reduction of 30 per cent occurred between 1928 and 1932. The contraction in the number of returns of less than P. 10,000 amounted to only 17 per cent during this same period. Incomes in excess of P. 10,000, however, represented only 6 per cent of the returns in 1928 and 5 per cent in 1932.

Supplementary to the personal income tax, and similar to it in administrative detail, is the property tax, payable by individuals and legal persons other than corporations.[95] It was originally introduced as a war measure in 1916 and was modeled on the Prussian *Erganzungsteuer* of 1909.[96] As the name of its Prussian predecessor implies, the purpose of the property tax is to supplement the income tax by imposing higher rates on unearned incomes. This intent is demonstrated by its exemption provisions and schedule of rates. Tax liability begins with P. 5,000 in case of families subject to the income tax, and with P. 25,000 in those cases where net family income is insufficient to necessitate payment of income tax. The tax rate is proportional at 0.1 per cent on family holdings valued at less than P. 120,000 and then increases progressively, reaching 1 per cent on property valued in excess of P. 20,000,000. In its early forms the relationship of the property tax to the income tax was emphasized by permission to subtract from the former the amount of income taxes paid on the property in question.[97] Furthermore, those who paid no income taxes received 50 per cent reduction on their property levies.[98]

[94] The testimony of certain persons interviewed in Budapest was to the effect that the efforts of the administration to secure a complete assessment of the income tax fell far short of complete success.

[95] Act XXXII of 1916; 500 PM/1927.

[96] Teleszky, *op. cit.*, p. 291.

[97] Act XXXII of 1916.

[98] Földes, *op. cit.*, p. 462.

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The tax is paid by Hungarians and by foreigners sojourning in Hungary for over a year on all their property; by those residing abroad, on that part of their property which is located in Hungary. It is assessed on the basis of returns filed by the head of the family in February of each year, although those whose property does not aggregate P. 200,000 are, at the discretion of the Finance Minister, excused from filing new returns each year. Assessed valuation is determined on the basis of market price prevailing on the last day of the preceding year and includes all property holdings, real estate, agricultural land, industrial and commercial equipment, capital wealth, and all other personal property. It thus takes into account wealth in the form of capital claims, bank deposits, securities—both those exempt and those subject to the income tax—and cash or specie. For purposes of taxation, it is immaterial whether or not property is productively employed. Personal effects, such as furniture, clothes, house implements, works of art and books, are excluded. In other details, such as deductions and exemptions, the property tax coincides with the income tax of which it is a fundamental part.

PROPERTY TAX REVENUE

	Total (In Thousand Pengö)	Per Capita (In Pengö)	Percentage of State Revenue	Percentage of All Revenue
1927.....	13,506	1.58	1.42	1.12
1928.....	12,805	1.49	1.38	1.04
1929.....	12,896	1.49	1.48	1.06
1930.....	12,260	1.41	1.56	1.10
1931.....	10,974	1.26	1.62	1.11
1932.....	17,560	2.00	2.67	1.86

From the point of view of productivity, the property tax is of only minor importance. Its normal yield during the post-war period approximated 1.5 per cent of all state revenue. It produced P. 13,500,000 in 1927 and less than P. 11,000,000 in 1931. The decline of its yield was interrupted in 1932 when, as an emergency measure, all property levies were doubled. In that year, the property tax accounted for P. 17,-

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500,000 or 2.67 per cent of all state revenue. Had not the rates been doubled in 1932, the yield of the property tax that year would have been approximately one-third short of its 1927 yield.

PROPERTY TAX: DISTRIBUTION OF ASSESSED VALUATION

	1928	1929	1930	1931	1932
	Percentage Distribution				
Agricultural Intangibles	47.4	45.9	44.1	42.6	39.2
Agricultural Equipment	6.7	6.3	6.0	5.6	5.0
Buildings	31.5	33.6	36.1	38.7	41.8
Industrial Capital	4.8	4.7	4.6	4.1	4.1
Commercial Capital	5.4	5.2	4.6	4.6	4.6
Mines	0.3	0.2	0.2	0.1	0.2
Capital Wealth	3.5	3.7	3.9	3.9	4.7
Miscellaneous	0.4	0.4	0.5	0.4	0.4
Total Per Cent	100.0	100.0	100.0	100.0	100.0
	In Millions of Pengō				
Total Valuation	10,689.3	11,069.9	10,915.6	10,604.0	9,327.8
Exemptions (Debts)	625.6	925.1	1,102.1	1,201.3	1,192.8
Taxable Valuation	10,063.6	10,144.8	9,813.5	9,402.6	8,135.0
Amount of Tax Levy	13.3	13.2	12.7	12.0	10.1
Tax Base in					
Provinces	7,173.4	7,179.7	6,875.6	6,499.3	5,484.3
Budapest	2,890.2	2,965.1	2,937.9	2,903.3	2,650.7
Hungary	10,063.6	10,144.8	9,813.5	9,402.6	8,135.0

The contraction in the yield of the property tax is ascribable largely to the drop in the value of agricultural intangibles. During the period 1928-1932, while taxable property values declined 19 per cent, the share of agricultural land and buildings in total assessed valuation shrank from 47.4 per cent in 1928 to 39.2 per cent in 1932. The contraction in the valuation of agricultural equipment kept pace with that of agricultural intangibles. This category accounted for 6.7 per cent of total

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valuation in 1928 and 5.0 per cent in 1932. Simultaneously the share of non-agricultural buildings advanced from 31.5 per cent to 41.8 per cent. The increase in the relative share of the buildings came about as a result of the removal of rent restrictions. It need only be mentioned that in the case of buildings, assessed valuation for taxation purposes is rental value, capitalized eight- to sixteen-fold, depending upon the amount of the rental value. Thus an increase in rentals of P. 5 automatically increased the assessed value of that property by P. 40-80. Details of the distribution of the property tax base among the various types of property are revealed by the previous table (page 102).

Comparatively new in its application and distinctly post-war in character is the tax levied for the care of disabled veterans (*rokkantellátási adó*).[99] This tax, provided for by Law

DISABLED VETERANS' TAX REVENUE

	Total (In Thousands of Pengö)	Per Capita (In Pengö)	Percentage of State Revenue	Percentage of All Revenue
1913.....	2,675*	0.35	0.48	0.37
1927.....	9,255	1.09	0.98	0.77
1928.....	11,186	1.30	1.21	0.90
1929.....	10,066	1 16	1.16	0.83
1930.....	10,597	1.22	1.35	0.96
1931.....	9,379	1.07	1.39	0.95
1932.....	7,989	0.91	1.21	0.84

* The amount collected in fees for exemption from military service.

XLVIII of 1925, accrues to the state and is devoted to the payment of veterans' pensions and the support of hospitals for disabled veterans. It is payable by all those subject to the land, house, corporation, *tantième,* earnings, income and property taxes and yields normally approximately P. 10,000,000 annually. The basis of the tax is the yearly total amount of the above enumerated taxes, and the rate rises from P. 0.10 to P. 12.0 as the principal tax bill increases from P. 10 to P. 240; on tax bills in excess of this amount the disabled veterans' tax

[99] Act XLVIII of 1925; 700 PM/1927; 98,399 PM/1929; 173,721 PM/1929; 1390/1933 M.E.

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is 5 per cent of the tax bill. Peddlers pay an annual invalids' tax of P. 4 in addition to P. 1 for each employee, and foreign traveling salesmen are charged with P. 8.[100] Exemptions are granted those who pay neither of the above taxes, or are the beneficiaries of the disabled veterans' compensation. Temporary exemption from the basic taxes (land tax, house tax, etc.) does not carry exemption from the disabled veterans' tax.

Classified also as a direct tax is the tax on automobiles. Motor vehicles operated on Hungarian public highways are subject to a road tax (*gépjármüvek közuti adója*) assessed and collected by the national government.[101] The basis of the tax is horsepower in the case of motorcycles and passenger cars, and weight in the case of buses and trucks.[102] The rates vary from P. 8 to P. 35 per horsepower in the case of motorcycles and passenger cars, and from P. 12 to P. 30 per 100 kilograms of weight in the case of trucks and motor buses.[103] The tax on foreign motor cars equipped with international touring certificates is P. 20 per month, after the first month, which is tax free. Exemption from the tax is granted to the Regent, the Court and the Army, as well as to the representatives of foreign governments. As will appear from the following table, the number of motor vehicles in Hungary is very small.

MOTOR VEHICLE TAX REVENUE

	Total (In Millions of Pengö)	Per Capita (In Pengö)	Percentage of State Revenue	Percentage of All Revenue	Number Paying Tax
1928.....	3,045	0.35	0.33	0.25	....
1929.....	4,045	0.47	0.47	0.34	23,410
1930.....	4,457	0.51	0.57	0.40	31,741
1931.....	4,415	0.51	0.63	0.44	30,131
1932.....	3,841	0.44	0.59	0.41	28,048

[100] These rates were doubled in 1933.

[101] Act VI of 1928; 63,000 KM/1928; 15,000 PM/1928; 76,000/1933 P.M.; and 5700/1934 M.E.

[102] For calculation of horsepower *cf.* 67,564 KM/ 1928.

[103] These rates were doubled as of April 1, 1933. 7390/1933 M. E.

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Before concluding the discussion of direct taxes we should mention a peculiar provision which places a limitation upon the aggregate amount of direct taxes payable by any individual. In Hungary the aggregate of all such taxes payable may not exceed 75 per cent of the taxpayers' income. In cases where this limit is exceeded the taxpayer may appeal to the authorities, who then proceed to reduce the taxes pro rata so as to bring the aggregate within the 75 per cent limitations. Administrative officials in Budapest state that appeals based on the ground that the limit is exceeded are very few in number.

In the preceding discussion the writers have not undertaken the delicate task of analyzing the conflict of forces which has produced the Hungarian tax system and of designating the economic classes which are favored or unfairly burdened. The purpose has been to describe the direct taxes as they exist. In concluding, however, certain general impressions may be recorded, not as propositions the correctness of all of which the authors are in a position to demonstrate, but rather as suggestions whose validity is worthy of more extended study.

As has been observed, during the pre-war years of relatively light taxation, Hungary obviously looked to Austria for leadership in taxation and Austrian practice has exercised a profound influence upon the character and structure of the tax system of Hungary. During the post-war years of heavy taxation a strong effort has been made to formulate a tax program favorable to industrial development. Much of what has been done can be accounted for only on the assumption that those responsible for public policy were convinced that it was of the highest importance that Hungarian industry be encouraged. Not merely by favorable treatment under the direct taxes, such as concessions to foreign concerns operating in the country, but also by tariffs, exemptions and subsidies of various kinds, has this conviction been translated into legislative action. But there have been numerous cross-currents as well. A strong agrarian interest has made its influence felt and costly artificial support for agriculture and numerous tax concessions to the farmers have resulted. Again the political leaders have

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been very sensitive to the danger of making conditions unsupportable for the large class of pensioners and unemployed. Although the net result is difficult to appraise, it seems probable that a thorough analysis would show that the large business and propertied classes have succeeded by one means or another in securing relatively favorable treatment and that the brunt of the tax impact under the system as it now stands falls with the greatest severity upon those in receipt of small salaries or in the possession of modest property holdings.

Finally, no one can examine the tax statutes of Hungary without being impressed by the number of original and ingenious fiscal devices which have been evolved in the course of Hungary's attempt to develop her system of taxation. In the face of great difficulties her financial leaders have exhibited resourcefulness and inventiveness of a high order. In this lies a promise of further contributions of interest to students of public finance, particularly if the future holds an opportunity to work under less heavy pressure than has been present in Hungary since the war.

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THE UNITED STATES AND THE INTERNATIONAL LABOR ORGANIZATION

THE United States is now a Member of the International Labor Organization.

The steps leading to her membership can easily be summarized. In June 1934 Congress adopted a Joint Resolution authorizing the President "to accept membership". On June 22 this resolution was officially communicated to the International Labor Conference which was then in session. The Conference, on the same date, adopted a resolution inviting the United States to accept membership in the Organization. In reply to this invitation, the President of the United States signified that in the exercise of the powers conferred on him by Congress he accepted membership as from August 20. He issued a proclamation to that effect on September 10. Thus there was an offer and an acceptance, and the United States accordingly became a contractual Member of the International Labor Organization as from the date mentioned.

The International Labor Organization is an association of states which have agreed to concert together for the purpose of improving conditions of labor and securing the progress of social justice. It operates through an annual Conference and a Governing Body aided by an international secretariat known as the International Labor Office, which, in addition to secretarial duties, also carries out industrial research. The rules of the association which define the rights and obligations of its Members provide for the method by which its objects are to be pursued. These rules are commonly referred to as "Part XIII of the Treaty of Versailles" and the Organization itself is not infrequently described as a branch of the League of Nations. The objects and methods of the Organization have given rise to little comment in the United States and such comment as has been made has been favorable, but the connection of the

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Organization with the Treaty of Versailles and with the League of Nations has provoked misgiving in certain quarters. As there is some confusion and misunderstanding as to the nature of those connections it may be useful to examine their character and extent.

Let us consider first the Treaty of Versailles. As we have said the Constitution of the International Labor Organization is frequently referred to as Part XIII of the Treaty of Versailles. But such reference is, if not wholly inaccurate, at all events incomplete, for the Constitution of the Organization is also to be found in the Treaty of St. Germain (Part XIII), the Treaty of Neuilly (Part XII) and the Treaty of Trianon (Part XIII), and there seems to be no valid reason why we should refer to one of these treaties rather than to another.

Moreover, to refer to one or even to all of them would seem to assume that the Members of the Organization are somehow parties to them. That is of course true as regards some Members, those who were in fact the High Contracting Parties of the treaties in question. But these Members by no means comprise all or even a large majority of the Organization. There are 62 Members of the Organization. But of these 28—Afghanistan, Albania, Argentina, Chile, Colombia, Denmark, Dominican Republic, Estonia, Ethiopia, Finland, Irak, Ireland, Latvia, Lithuania, Luxemburg, Mexico, Netherlands, Norway, Paraguay, Persia, Salvador, Spain, Sweden, Switzerland, Turkey, the United States of America, U. S. S. R., and Venezuela—are in no sense parties to any of the Peace Treaties.

It would therefore seem more correct to say that what defines the rights and duties of the Members of the Labor Organization is the Constitution of the Organization and not this or that treaty to which a large number of the Members are not parties and by which they are in consequence by no means bound.

It may of course be argued that this is just splitting hairs: that in fact the Constitution of the Organization is part and parcel of the treaties in question and that Members of the Organization who have no other connection with those treaties have, by the fact of becoming Members of the Organization, accepted, and therefore become parties to, those parts of the

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treaties which contain the Constitution of the Labor Organization.

An examination of this contention has a certain interest and it may be worth while to examine it closely. In so doing we shall refer only to the Treaty of Versailles but the arguments will obviously apply equally to the other treaties.

The Report of the Foreign Affairs Committee of the House of Representatives [1] in recommending the adoption of the Joint Resolution referred to above points out that Part XIII of the Treaty of Versailles "contains a clause for its own amendment". Let us see what are the implications of that rather laconic phrase. The clause in question provides that Part XIII can be amended by a special procedure which is as follows: any amendment must be adopted by a majority of two-thirds in the International Labor Conference and comes into force when and if it has been ratified by three-quarters of the Members of the Organization, including those Members who are members of the Council of the League of Nations.

It may be noted that there are no limitations on the nature of the amendments which may be so brought into force. Such amendments may either diminish or increase the rights and obligations for which Part XIII provides. Thus Part XIII of the Treaty of Versailles differs from the other parts of the Treaty, with the exception of Part I (the Covenant of the League of Nations), in this important respect, that whereas the High Contracting Parties to the Treaty can amend the rest of the Treaty at their pleasure (if they are unanimous in wishing to do so) they have no such power of amendment as regards the Constitution of the International Labor Organization. They have surrendered that power to the Organization which they created.

But even if we recognize Part XIII as very different in character from the rest of the Treaty, can it be argued that, as was suggested above, the Members of the Organization, whether they were High Contracting Parties or not, are all parties to it? As all the Members are clearly bound by the Constitution of the Organization to which they belong, since otherwise they could

[1] 73d Congress, 2d Session, Report 2006.

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not be described as Members, it is clear that they are all bound by (or parties to) the provisions contained in Part XIII. Our question is therefore reduced to this: Are the provisions contained in Part XIII part of the Treaty of Versailles? Of course they are part of it in the sense that they are printed in it, but are they part of it in the sense that their legal existence is inseparable from it?

The question is by no means purely academic, and it will repay closer examination. First of all what is a treaty? A contract between the High Contracting Parties would seem to be a sufficient answer. That is what Part XIII clearly was in 1920 when the Treaty of Versailles came into force. But what is Part XIII now?

Let us see what might happen to it under the "provisions for its own amendment". Let us simplify the argument by supposing that there were only two original High Contracting Parties to the Treaty of Versailles, whom we will call A and B, and that there subsequently adhered to the Labor Organization two other states, C and D. Let us suppose that A and B both withdraw from the Organization. It may be argued that A and B are still "Parties". All they have done is to exercise their right under their contract as regards the suspension of a part of it. But suppose further that C and D, the remaining Members of the Organization, now exercise the provisions for amendment and completely alter "Part XIII", introducing into it positive obligations of an entirely new kind. Is it possible then to hold, without making nonsense of all language, that Part XIII (so transformed) is a contract or part of a contract between A and B?

We have of course taken an extreme case. But such a case is theoretically possible. Obligations which began as obligations between A and B have become obligations between C and D, none of which are binding on A and B. Surely the correct description of those new obligations cannot be made in terms of A and B. Their correct description is that of obligations between C and D. Even if we do not assume that A and B withdraw, we are in the presence of a series of rights and obligations binding on all four, i. e., on A, B, C and D, and their

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correct description should refer to all of them and not only to A and B. In other words, what exists today is something which binds all the Members of the International Labor Organization. Part XIII of the Treaty of Versailles is its original form which still has a special relationship to the High Contracting Parties to that treaty, but which has no significance, other than historical, as regards all the Members of the Organization *qua* Members.

But is this permanently true? It may be argued that we can take another imaginary case. Suppose that the membership of the Organization were to shrink till it was composed of the High Contracting Parties of the Treaty of Versailles and of these only. Would they not then be masters of their contract, and if they so chose could they not amend it as they pleased? The answer is that even in that extreme case they could not, and in this respect Part XIII differs from the Covenant of the League. The provision for the amendment of Part XIII includes as we have seen a vote by a two-thirds majority of the Conference. In the Conference the governments have only fifty per cent of the voting power, the remaining fifty per cent being equally divided between employers' and workers' delegates. Thus even in this extreme case Part XIII could not be amended by the original Peace Conference if it reconvened. What began as a contract between certain High Contracting Parties has achieved an independent existence of its own. It has become the Constitution of the International Labor Organization and the decision which brought it into being is irreversible. In other words the Organization exists now in its own right. It can abdicate but it can never be dethroned. Hence there are strong reasons for concluding that "Part XIII of the Treaty of Versailles" is only an inaccurate method of referring to what is really the Constitution of the International Labor Organization, that is to say to the body of rights and obligations regulating the relations between the Members of the Organization *qua* Members which is completely free from any legal subordination to any other legal instrument whatsoever. The description "Part XIII of the Treaty of Versailles 1919" is in fact like the brass plate found

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on a ship which gives the name of the shipbuilding yard in which the vessel was built, and the date at which it was launched, but which gives no indication of its present owners.

But if the Constitution of the International Labor Organization has no relation, save historical, with the treaties of peace, it has a certain relationship with the League of Nations.

The resolution of Congress in authorizing the President to accept membership of the International Labor Organization expressly provided that in so doing the President should "accept no obligation under the Covenant of the League of Nations". There is no difficulty in respecting this provision since any functions performed by the League in connection with the Labor Organization are provided for not in the Covenant but in the Constitution of the Organization itself. But do these functions imply any control by the League over the activities of the Labor Organization? In order to see whether the provision of the Joint Resolution can be respected not only in the letter but also in the spirit it will be necessary to review briefly the references to the League which are contained in the Constitution of the Organization and the way in which effect has been given to them.

Some of these references are merely rhetorical, as for example, "whereas the League of Nations has for its object the establishment of universal peace",[2] and the statement that certain principles of labor legislation are "well fitted to guide the policy of the League of Nations".[3]

Certain other references lay duties on the Secretary-General or on the Council. For example, authenticated copies of the Draft Conventions and Recommendations adopted by the Conference have to be deposited with the Secretary-General and he communicates certified copies of them to the Members.[4] The Members deposit their ratifications with him and inform him of the action taken by them upon Recommendations.[4] It will

[2] Preamble.

[3] Article 41 (427). The figure given in brackets refers to the article of the Treaty of Versailles. The same system of numbering is used in all subsequent notes.

[4] Article 19 (405).

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be remembered that, under Article 18 of the Covenant, all treaties have to be registered with the Secretary-General, and the object of these provisions was to give to the decisions of the Labor Conference, which are formulated by a special and novel procedure, the same solemn character as treaties negotiated in the ordinary way. The Secretary-General is also entrusted with certain formal duties in connection with Commissions of Enquiry to report in cases where it is alleged that a ratified Convention has not been observed.[5] There is clearly nothing in any of these activities of the Secretary-General which in any way subordinates the procedure of the Labor Conference to his control. It may be noted that Article 12 (398) entitles the International Labor Office to the assistance of the Secretary-General in any matter in which it can be given whereas there is no similar provision which entitles the League to request or exact any services from the International Labor Office.

In the case of a dispute as to which are the Eight States of Chief Industrial Importance who are entitled to seats on the Governing Body of the International Labor Organization, the question is to be decided by the Council of the League.[6]

This is no more than a provision for arbitration for the case where the Members of the International Labor Organization are unable to agree among themselves, and it was natural to choose as the arbitrating body a body with the prestige and status appropriate to the nature of the decision involved, namely, that of the relative industrial importance of great states. Here again there is no question of the League controlling the policy of the Labor Organization. Any confusion in this respect arises out of two more general and fundamental provisions, namely, those relating to membership and finance, and these we must now examine.

The Constitution of the Organization provides that membership of the League shall carry with it membership of the International Labor Organization.[7] It has been argued that this

[5] Article 26 (412) and Article 29 (415).

[6] Article 7 (398).

[7] Article 1 (387).

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provision requires that there must be identity of membership between the International Labor Organization and the League. It is impossible to discuss here all the arguments which have been advanced on one side or the other. Whatever their value the question has been decided by a series of precedents which place the matter beyond all doubt. Germany and Austria were admitted as Members of the Labor Organization before their entry into the League: Brazil, which has left the League, has continued as a Member of the Labor Organization, and has even been elected a member of the Governing Body of that institution: Spain when she gave notice to leave the League (the notice was afterwards withdrawn) announced her intention of remaining a Member of the Labor Organization, and Japan has made a similar declaration: and finally a unanimous vote of the Labor Conference has invited the United States to accept membership on the explicit understanding that in so doing she accepts no obligations under the Covenant of the League.

Any doubts which may have existed on the possibility of separate membership have thus been removed. It is interesting, however, to note how they originally arose. The Constitution of the Organization was drawn up at the Paris Peace Conference simultaneously with the Covenant of the League. Undoubtedly at the beginning of that process there was an optimistic view that an era of widespread international collaboration was about to open and that the participants in its various phases would be the same and that such participation would steadily grow to be universal. Moreover, though the League and the Labor Organization were from the start envisaged as separate institutions, there was a desire, on the part of those who wished to strengthen the League, to secure for it the sympathy and support of that important body of organized public opinion represented by the trade-union movement: and on the side of those responsible for the scheme of the Labor Organization a desire that the organization they were creating should share in the prestige of the great political institution which was being concurrently created. When, however, it became clear that an early entry of Germany into the League could not be

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contemplated and when doubts arose as to whether Japan would not remain out of the League because of her failure to secure a recognition in the Covenant of the principle of racial equality, the wisdom of providing for identical membership of the two institutions began to be discussed. In the end, the so-called Supreme Council, in whose hands lay the final decision of all matters at the Peace Conference, left the matter to be decided by events. Provision was made that membership of the League should carry with it obligatory membership of the Labor Organization, but no converse provision was made that all Members of the Labor Organization must be Members of the League. What led to subsequent confusion was that the Plenary Session of the Peace Conference in approving the Constitution of the Labor Organization adopted a resolution instructing the Drafting Committee to make the Constitution conform with the Covenant "in the character of its membership and in the method of adherence". It was assumed that this meant providing for identity of membership and that the final text, although it made no specific provision in that sense, must be interpreted as so providing. A recent examination of all the documentary material [8] has shown that the purpose of the Plenary resolution was quite different: it related not to the general question of membership, but to the removal of certain discriminations as regards the character of the membership and the method of adherence of the British Dominions. Sir Robert Borden, the author of the resolution in question, was fighting for full equality for the Dominions with other states: he had almost won his battle as regards the Covenant when the Constitution of the Labor Organization in a complete form came before the Plenary Session containing just those discriminations against the Dominions which he was confident he would succeed in removing from the Covenant, and if he succeeded there he naturally wished that the discriminations in question should equally disappear from the Constitution of the Labor Organization. And in fact they did.

[8] *The Origins of the International Labor Organization*, edited by J. T. Shotwell (Columbia University Press, 1934, 2 vols.).

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It must be remembered that at the Peace Conference, where innumerable questions were being discussed at the same time, any properly organized coördination such as we are now accustomed to in international discussions run by a professional international secretariat, was impossible, and the knowledge which we now have of much of its proceedings was not available to those actually engaged on one part or another of its work, nor to those who had to apply its decisions immediately after the signature of the treaty. Hence the Borden resolution, which was adopted at a public session and therefore generally known, was later invoked, separated from all the negotiations which formed its context, as a decisive argument in favor of the thesis of identity of membership. Moreover, although as we have seen, identity of membership was deliberately not provided for, the general idea that there would be a unified world coöperation as regards international activities was in the back of peoples' minds and was not corrected by any positive pronouncement that other possibilities should be provided for.

It is this which explains the phraseology of certain other provisions in the Constitution of the Labor Organization which undoubtedly envisaged a greater unity than has eventuated but which do not constitute any obstacle to the complete independence of the Labor Organization and which have proved to be easily workable in circumstances somewhat different from those which were anticipated.

The most important of these is the provision that the expenses of the Organization shall be paid "out of the general funds of the League".[9]

This provision would seem at first sight to imply a certain control by the League over the policy or work of the International Labor Organization on the principle that he who pays the piper calls the tune. To understand its import we must therefore look at those articles which provide for the activities of the Organization.[10] It would take too long to examine them in detail but it is enough to note that the Organization is com-

[9] Article 13 (399).

[10] The Preamble and almost all the Articles of the Constitution.

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pletely autonomous in this respect. There is no text which directly or indirectly implies that the decisions of the Organization as regards its activities or policy are in any way subject to confirmation by or appeal to any other body, save in the case where an appeal may be made on legal grounds to the Permanent Court that such activities are in contradiction with its Constitution.[11] Moreover, provision was made for financing the Organization before the League came into existence or if it failed to do so,[12] otherwise than from "the general funds of the League". Contributions were to be paid direct by the Members of the Organization. A consideration of this provision gives the clue to the real meaning of the provision under discussion. The expenses of the Organization are to be borne as is natural by the Members of the Organization. But if the League came into existence there was an obvious administrative simplification in having only one general fund, one international tax assessment and one international tax-gatherer. When it is stated that the expenses are to be paid "out of the general funds of the League" this does not mean that the League pays for the Labor Organization. What this means is that the Members of the Labor Organization pay for the Labor Organization but that they do so by paying their contributions for that purpose along with their contributions for the League by means of a single check.

No procedure was laid down in the Constitution for the method by which the amount of the total budget of the Organization should be fixed. It was clear that this would depend on the decisions taken from time to time by the Conference and the Governing Body, and that such expenditure as would be required for their execution would fall to be met by contributions from the Member States. Complete freedom was therefore left for evolving such budgetary system as might be most convenient. The system which has been worked out in practice is for the Governing Body, after detailed examination by its Finance Committee, to adopt the budget of the Organization. The budget so adopted is sent to the Assembly of the League so that it may be incorporated in the general League budget.

[11] Article 37 (423). [12] Article 38 (424).

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This incorporation is performed by the Fourth Committee of the Assembly, which examines the budget from a financial point of view and is furnished with any necessary explanations by the Director of the International Labor Office.

It is rare for any amendment of the budget to be affected during this examination; though there have been occasions on which minor adjustments have been made in agreement with the Director, more usually the observations made by the delegates of states not represented on the Governing Body are taken into consideration by that body in framing its budget for the following year.

The examination of the League budget proper is on a different footing since the Assembly's powers are clearly unlimited not only financially but also politically. It is complete master of all the activities of the League organization proper and can suppress or modify them as it chooses. In the case of the Labor Organization budget there has already been approval by the Governing Body on which sixteen governments are represented, and the money is required for activities which the Assembly *qua* Assembly is not competent to judge. The system of course is not ideal. Theoretical possibilities of a conflict between the Assembly and the Governing Body can easily be imagined. In practice, however, they have not occurred and the Fourth Committee of the Assembly, while examining the International Labor Office budget with care and occasionally criticizing it, has always been careful to respect fully the autonomy of the Labor Organization.

When the International Labor Office budget has been incorporated into the general budget of the League a state which is a Member both of the League and of the Labor Organization receives a bill showing separately the amount it owes in respect of each of them; these amounts are calculated according to a scale which has been approved by the Assembly: the Member then sends a check for the total to the Treasurer who remits to the International Labor Office its proportion of that total sum. This remittance must be made immediately and independently of the state of the finances of the two organizations at the moment.

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The system was based originally on the assumption, to which we have referred above, that international collaboration in both the political and the labor fields would be coextensive. That assumption has been falsified by certain states which have left the League remaining in the Labor Organization or by states joining the Labor Organization without joining the League. Such states are not, however, required to participate in any way in the League machinery. They pay their due share of the Labor Organization budget direct to the International Labor Office on the basis of such proportion as they have agreed with the Governing Body.

The Constitution of the International Labor Organization contains one other financial provision,[13] namely that the Director shall be responsible to the Secretary-General for the proper expenditure of the sums remitted to him. This is simply a provision for a regular audit designed to guarantee that money shall only be spent for the purposes for which it was provided in the budget.

So far there is nothing in the references to the League of Nations in the Constitution of the Labor Organization nor in the relations between that organization and the League which conflicts with the complete autonomy of the latter or which involves any non-Member of the League which is a Member of the Labor Organization in any League entanglement. Reference, however, has sometimes been made to the provision of the Constitution which declares that "the International Labor Office shall be established at the seat of the League *as part of the organisation of the League*",[14] and this provision calls for a word of comment. First of all it is useful to look at the corresponding French text since both the French and English texts of the Constitution are equally authentic. The French text is "*et fera partie de l'ensemble des institutions de la Société*", which may be translated as "part of the group of League organizations". This certainly implies no suggestion that one of this group is in any way superior to or in control of the others, and in fact, as we have seen, the autonomy of the International Labor Organization is complete. The nature of the

[13] Article 13 (399). [14] Article 6 (392).

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relations which have existed for the last fifteen years between the Labor Organization and the League is a sufficient answer to those who attempt to read into the English text a subordination of the Labor Organization to the League. That text, however, has another meaning which is of some interest, and which is made clear by another provision in which it is stated that the International Labor Organization is "associated" with the League of Nations.[15]

There are in fact two Leagues. The League in the strict juridical sense of the body which operates under the Covenant —the League which includes the Assembly, the Council and the Secretariat, and those technical organizations which have been created by it and are under its authority and control. But there is also the League, *lato sensu,* the association or group of institutions which form the post-war effort towards international coöperation in different fields and which comprise the political League (the League *stricto sensu*), the League for justice (the Permanent Court) and the social League (the International Labor Organization). Unfortunately the same word "League" is used to mean these two different things just as the word British Empire is used sometimes to mean the British Empire properly so-called—the imperium of Great Britain and her colonies, protectorates and possessions—and on other occasions to mean the British Empire in the sense of the group of independent units now more commonly designated as the British Commonwealth of Nations. If we bear in mind the dual use of the term League and understand it in the wider sense each time that its context or international practice requires, reference to the "general funds of the League" or the "organization of the League" will not lead to any confusion, and administrative economies and simplifications like the existence and functions of a "League" Treasurer, or unified conditions of service and a single pension fund for "League" officials will not be interpreted as implying any control by the political League over the policy and activity of wholly autonomous and independent organizations such as the Permanent Court or the International Labor Organization.

[15] Article 41 (427).

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Hence it may be concluded that in entering the International Labor Organization the United States is in no way involved in the Treaty of Versailles and that she assumes no obligations whatever under the Covenant of the League of Nations. She joins an organization which operates under its own Constitution and which is subordinated to no other body or statute. She accepts within that Constitution the rights and obligations which are accorded to or binding on the Members and acquires no other rights or obligations whatsoever. Any pretense to the contrary is based either on ignorance or misinterpretation of the texts or on a misunderstanding of certain administrative practices which have been built up as a convenient and economical *modus vivendi,* but which respect entirely the complete independence and autonomy of the International Labor Organization.

EDWARD J. PHELAN.

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REVIEWS

The Queen and Mr. Gladstone. By PHILIP GUEDALLA. Garden City, N. Y., Doubleday, Doran & Co., Inc., 1934.—vi, 793 pp. $5.00.

Why was it that the harmony and cordiality which once existed between Queen Victoria and Mr. Gladstone were followed by estrangement and antipathy? The answer to this question, which has engaged the attention of a number of historians and biographers, is not simple, but Mr. Guedalla presents the first-hand materials that are essential for forming a well-grounded opinion, prefaced by a lucid and carefully documented introduction executed in his best manner. The Papers in the possession of the Gladstone Trustees contain approximately 1,700 letters or telegrams from the Queen or her private secretaries to Gladstone and copies or drafts of 4,500 from him to them. From this mass of documents Mr. Guedalla has selected some 1,200, by far the greater part of which have not previously been published.

He sounds a wise note of warning against the psychographic type of biography which has found wide favor of late. Though eminently dramatic, it is psychologically shallow because, like the method of the cartoonist, it exaggerates a single characteristic in the complex that goes to make up personality, and it is historically unsound because it ignores the element of change and growth which all individuals experience. In the case of Queen Victoria Mr. Guedalla perceives at least three phases—Victoria I (the youthful pupil of Lord Melbourne), Victoria II (the wife and widow of Prince Albert) and Victoria III (Disraeli's Queen, who retained to the end the impression of his teaching). And there was more than one Mr. Gladstone. It is a far cry from the young Tory M. P. of the 1830's to the octogenarian Home Ruler of the 1890's, and between the two was the disciple of Peel, who found his way into the Liberal Party and became its leader. This Gladstone of the middle period was highly esteemed by Victoria II, but to Victoria III the Grand Old Man of Midlothian and after was an object of extreme suspicion and dislike.

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Though in no sense a courtier Gladstone was by sentiment and conviction a strong constitutional monarchist, and it appears to have been his concern for the interests and prestige of the monarchy that led, curiously enough, to the earliest forebodings of dissension between the Queen and himself. He was disquieted by the growth of republican propaganda during his first ministry and attributed it in great part to the withdrawal of the Queen from society and the public view after the death of the Prince Consort. He believed that her widowed seclusion at royal residences remote from the capital was injurious to the monarchy as well as burdensome to busy ministers, who were compelled to make frequent pilgrimages to the Isle of Wight and the highlands of Scotland for audience with the sovereign. He urged her to make public appearances on important occasions, and in the summer of 1871 he suggested that in deference to parliamentary opinion she postpone her annual migration to Balmoral till the close of the parliamentary session. The Queen, who was not in the best of health, refused to take his advice, regarding it as an intolerable impertinence that her personal acts and movements should be called in question, and in correspondence with him she gave way to an outburst of irritation and self-pity which caused him great pain. "Upon the whole", he wrote to her private secretary, "I think it has been the most sickening piece of experience which I have had during near forty years of public life." He noticed an immediate change in the Queen's manner. Referring to a conversation with her in the following autumn, he wrote in a letter to one of his colleagues in the ministry: "The repellent power which she so well knows how to use has been put in action towards me on this occasion for the first time since the formation of the Government. I have felt myself on a new and different footing with her." His loyalty to the monarchy remained unaffected, but his personal devotion to the Queen seems to have been strained by this unfortunate incident, which was soon followed by disagreement between the two on the subject of suitable occupation for the Prince of Wales. An entry in Gladstone's diary in November 1872 records his opinion that "the occurrences and correspondence of this year have led and will lead her to 'shut up' (so to speak) towards me." On the occasion of his resignation as prime minister in 1874 he noted the receipt of a letter "of scant kindness" from her.

And then came the glamorous days of the Disraeli ministry, when the Queen was encouraged by her new prime minister, who entered with gusto upon the game of courtly flattery and royal make-believe,

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to identify herself with the decisions of his government and to look upon his opponents as her critics. Mr. Guedalla agrees with the view expressed by Lord Gladstone in his reminiscent biographical sketch of his father that Disraeli poisoned the Queen's mind against Gladstone. They had begun to drift apart, it is true, but there had been no evidence of positive dislike of him on her part. His denunciation of Disraeli's Near Eastern policy she regarded as unpatriotic and disloyal, and after 1876 there was no possibility of really friendly relations between them. Toward the close of the Disraeli ministry she wrote in a private letter that she never could take Mr. Gladstone as her minister again, for she could never have confidence in him "after his violent, mischievous, and dangerous conduct for the last three years." Poor Queen! The realities of parliamentary government were too strong for her, and she had to submit to *three* more Gladstone governments.

The tragedy in the relations between Queen Victoria and Mr. Gladstone is interpreted by Mr. Guedalla as a tragedy of growth.

> Time and growth altered both of them. For with the passage of the years Mr. Gladstone underwent considerable changes; and it was no less evident that time (and Disraeli) changed the Queen. . . . As the years went by, Gladstone moved steadily towards the Left in politics, while by a sad mischance his sovereign inclined towards the Right. . . . Gladstone did not stop growing. For while the Queen retained for life the fixed impression of Disraeli's teaching, Mr. Gladstone continued to grow visibly more Radical. This obstinate development widened the gulf between them; and it resulted that the Queen with her mind firmly set in the safe principles of Disraelian Conservatism, surveyed his popular vagaries with deepening and elderly disapproval.

R. L. SCHUYLER

General Sociology. By HENRY PRATT FAIRCHILD. New York, John Wiley & Sons, Inc., 1934.—x, 634 pp. $3.75.

This is the most important sociological study in the Sumner tradition since the publication of *The Science of Society.* That it reveals the influence of Sumner is a tribute to the vigor of mind of that great teacher. But it should be added at once that Fairchild is not a mere follower, but shows much independence of thought.

The author defends the right of his new text to existence on the ground of new emphasis and a number of new elements in treatment. Some of these are novel and significant; though others seem to the reviewer to be of more doubtful importance. Beginning with the

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statement that because social life is prehuman and therefore it is unnecessary to discuss social origins, the outline of the author's thought is briefly as follows: In the course of social evolution, human desires seek fulfillment in objects which it is believed will satisfy the desires. The objects of desire are interests; the basis of action is belief. Belief is constantly modified by new knowledge, hence social change. Because of change, problems arise through lag or difference in the rate and degree of social adjustment. This suggests the need for social self-direction or "engineering" as the author names it. But social engineering is possible only if there are definite objectives upon which belief may fasten. These objectives express "ultimate values" and therefore sociology must strive to formulate these values: needless to say that the effort of the author to make use of this final concept ends in more haze than clear light.

In the elaboration of this general outline there is much that is noteworthy, as well as aspects less successfully worked out. The discussion of population principles in two careful chapters is excellent and constitutes one of the author's most valued contributions. Economic problems in relation to social life receive also a more adequate and intelligent treatment than is usual in texts in sociology —a fortunate emphasis, in the judgment of the reviewer. Two thoughtful chapters are devoted to an analysis of scientific method and its relation to the social subjects. These chapters will be of help to beginning students—though the maturer mind may conclude that the discussion raises many difficulties.

Among other distinctive and valuable features of the book is the classification of groups. Of value also is the effort to clear up the nature and meaning of social problems.

Critically minded students will be disappointed in certain respects. There is a noticeable lack of consideration of some of the major recent trends in sociological thinking. The term social psychology does not appear nor is there any evidence that its varied and revealing contributions to sociological thinking have touched the author's views. For example, the term *communication* finds no place in the index. The treatment of human evolution in its primitive phases, based on Sumner's type of economic determinism, with its fixed stages, gives the reader only an inadequate and not altogether true picture of the sociological nature and importance of culture as developed by modern students. Further, though there are scattered and brief references to the geographic and occupational distribution of population, there is no recognition of the concept of human ecology. This is the more

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surprising in view of Fairchild's emphasis upon the economic aspects of social organization. Attention may be called also to the brief, almost sketchy character of the final chapters in which social problems are described. There is little factual information offered the reader, while generalizations are plentiful and at times hardly more than a succession of the author's opinions about current events.

While the above criticisms seem necessary, as a whole there is so much of strength and of value, so much clear and independent thinking in this important book that it deserves and will have a wide appeal to students of the subject. It is written in plain and interesting language, it is rich in illustration, and it is constructed upon a definite and well-considered plan.

WALTER G. BEACH

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America's Capacity to Produce. By EDWIN G. NOURSE and Associates. Washington, The Brookings Institution, 1934.—xiii, 608 pp. $3.50.

The industry of Dr. Nourse and his associates in assembling and interpreting the many scattered materials on industrial capacity is of no small service to a wide public. With concern over unused productive capacity both widespread and intense their report in *America's Capacity to Produce* is a timely one. It is especially so in view of the wide variety of unsupported and probably non-comparable figures that recently have been presented to a credulous audience. Catholicity is not a virtue of the extremist when he speaks of overcapacity. However, the study under review commits no faults of selective illustration. It covers the full picture of the industrial process with elaborate thoroughness.

America's Capacity to Produce during the Period from 1900 to 1930 with the Capital Goods and Labor Force Which She Then Possessed and with the Technology and the General Pattern of Operative and Commercial Organization Then Prevailing—this is not a subtitle in the style of an 18th-century Political Arithmetick but rather the authors' statement of their problem. The assumptions and qualifications here implicit have been both an aid and a failing in the survey. For while the insistence that the calculation of excess productive capacity be premised on normal, customary practices, usual seasonal variations and the actual distribution of productive energies gives to the Brookings findings the earmarks of realism,

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it does so only at the cost of leaving unanswered the arguments of those who would strike at the more fundamental questions involved. The acceptance of the existent distribution of economic resources means that the possibilities of waste through misdirection of effort, duplication of services or undue offsetting of professional energies are not fully explored.

With the exception of a brief foreword and introduction and a shorter chapter of conclusions, the book runs for over 400 pages with a detailed analysis of capacity records and related figures for all forms of economic activity. Further details are given in 164 pages of Appendices. No stone has been left unturned in the search for a possible bottleneck which would limit the full use of existing capacity. From the production of raw materials to the supply of money and credit, all save government is tested for an unused investment. The significance of the sections varies with the reality of the concepts and the critical nature of the problems discussed. For the discussion of overcapacity in mineral production the services of Frederick G. Tryon of the United States Bureau of Mines were secured and these chapters, though long, are excellent. He concludes that, on the average, 83 per cent of practical (rather than theoretical) capacity was in use in 1929.

Turning to manufactures, where one looks first for overcapacity of physical equipment, we find the situation in 29 major industries discussed separately and in some detail. Using currently published figures, supplemented by private estimates, the authors arrive at a series of estimates of the relation of output to a practical capacity capable of "sustained simultaneous operation". This sample list of industries, which yields an average figure again 83 per cent in 1929, represents about 43 per cent of all manufacturing. In 1923, when the last complete census of capacity was taken, the reported ratios of output to capacity for these 29 industries averaged 74 per cent as compared with 72 per cent for all manufacturing industries. Since the present average has been systematically prepared with considerable care taken to secure comparability of the individual figures, it probably gives a more accurate picture of conditions in 1929 than did the census tabulation in 1923, at least for the industries represented.

Additional chapters of the report are devoted to the approximation of the degree of utilization of capacity in agriculture, the electric utilities, transportation, merchandising and money and credit—in the last named the critical element being the relative supply of gold

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reserves and currency. Here is an instance where capacity can be created by legal fiat, as we have recently seen.

Capacity to produce depends on more than rich resources and extensive mechanical equipment. It depends on the national labor force as well. Taking the actual employment in 1929 as evidence of capacity utilized and the approximate volume of unemployment as a measure of that unused, the utilization of labor in manufactures is estimated at 95 per cent. Translating this percentage into actual numbers of men and contrasting with the utilization of mechanical equipment (83 per cent), the authors arrive at an estimated shortage of 1,000,000 men in manufacturing industries if full use of equipment is to be attained—a shortage to be met, fortunately, by workers released from agriculture, construction, trade, service and other occupations where an oversupply is held to exist. In making such estimates it is assumed that only the *average* unused capacity is to be brought back into use. Since this average figure for manufactures has been secured through the use of a sample list of industries combined with weights based upon a potential 'value added by manufacture' rather than upon number employed, it is an average not quite appropriate to the present purpose. Indeed, the raising of the 1929 ratio for each of the 29 sample industries to full utilization of capacity would, on the same assumption of a constant ratio of men to machines, have required almost one million additional workers alone, without regard to the other three-fifths of manufacturing industries for which individual figures are not available. It would appear that the Brookings estimate errs on the side of understatement.

Study of the problem of overcapacity is important in relation to the possible rôle that overproduction and misdirection of purchasing power play in the business cycle. On this point the evidence contributed by the Brookings study reveals no tendency towards an increasing excess capacity during the three decades from 1900 to 1930 and no excessive surplus capacity in 1929. But the Brookings study goes beyond this cyclical problem, and looks to unused capacity as an unrealized source of income for the nation. It computes an estimate of 15 billion dollars, or some 19 per cent of the national product, as the 'unearned' dividend. Why this potential dividend was not earned this first report of the series planned by the Brookings Institution does not discuss. But the figure is large enough to make worth while any effort that might secure it, although far too small, under the limits of the assumptions, to support an economy of abundance.

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Yet it is not in the full use of present resources that the chief hope for economic progress lies. Ninety-five per cent or even 100 per cent utilization of the nation's capacity might be obtained under a static economy, if such were desirable, but it is impossible of attainment under any dynamic system. For overcapacity is due to many and lasting forces, for example planning, as in the telephone industry, competition (automobile industry), changes in demand (bituminous coal and cotton textiles), as well as to the obsolescence that is the twin of invention.

Since it is through progress—technological, physical, mechanical, organizational—that the future increases in real per capita income must come, the search into present unused capacity is not the sole hope for increased welfare. Indeed there may be instances of a greater unused capacity due to the failure of the industrial system to introduce new processes and new machines than to the failure to use fully the equipment which it has. But within the limits of the present circumstance, and with sober deference to the practical rather than the theoretical, Dr. Nourse and his associates have sought a measure of what might have been accomplished had existent productive capacity been fully utilized. This task they have done carefully and well.

CHARLES A. BLISS

COLUMBIA UNIVERSITY

Plebiscites Since the World War. By SARAH WAMBAUGH. Washington, Carnegie Endowment for International Peace, 1933. —2 vols.—xxix, 603; xiv, 614 pp. $5.00.

Plebiscites since the World War is a penetrating analysis and exhaustive documentation of plebiscites actually allowed in the transfers of territory effected by the peace treaties following the World War. But there were contemplated, and actually accomplished, many more transfers from one sovereignty to another than those by plebiscites. Reference is here not to the national entities breaking away from the Austro-Hungarian Empire, such as Hungarians, Czechs and Slavs, but rather to fragments of nationalities involved in Alsace-Lorraine, the Polish corridor, Danzig, Magyar and German enclaves turned over to Rumania and Czechoslovakia, Fiume, Trieste, Dalmatia, Macedonia, Dobrudja, Thrace, Galicia, Bessarabia, Turkish possessions in Asia Minor, etc., etc.

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In the case of some of these transfers plebiscites were suggested but not allowed. As the author states (vol. I, p. ix), these transfers were effected by the Powers "resorting for their method of determination at one time to strategic considerations, at another to language statistics, or to history, or to geographic or economic criteria." Realizing the limitations inherent in the subject and at the same time courageously seeking to save for the plebiscite what can be saved, the author argues as follows (vol. I, p. ix):

> Such methods [of determining transfers of territory without plebiscites] are even less satisfactory to democratic principles [than the method of transfer by plebiscite]. Therefore it seems certain that we shall keep the plebiscite as a tool in the workshop of political science. Democracy cannot, however, be served by faulty plebiscites. If we are to keep the tool we must learn how to use it. Therefore we must study those plebiscites already held so that we may discover our errors as well as perfect our technique for the future. It was to further this purpose, essential not only for the sake of political science, but for the protection of the inhabitants of plebiscitary areas, that the present work was undertaken.

As an application of democratic principles the popular vote, with decision by simple majority, is as a rule employed to determine issues of a general and transient character, such as the election of representatives, public officials, and the like. When a more fundamental or more permanent issue is involved, such as ratification of a constitution, a two-thirds or three-fourths majority is considered desirable and as a rule required. But what is more fundamental, what is expected to be more permanent, than the transfer of human beings from the sovereignty of one state to that of another! Yet by the specific terms of the treaty provisions concerned, the plebiscites held since the World War have been carried out on the basis of decision by the majority of votes cast, i. e., by simple majority. This basis of decision has remained unchallenged in the author's recommendations for the holding of plebiscites in the future. From the presentation of the motivation of the Powers (Preface and chapters i, xi, xii) it is evident that their refusal to allow plebiscites in the majority of the cases of transfer was the result, in no little degree, of a realization of the incongruity of making a change of allegiance dependent upon a decision by simple majority. What is more, the evidence implies that the realization of this incongruity will be the reason for similar refusals in the future.

Under a democratic system the voter of the defeated minority abides by a decision by simple majority in the expectation of revers-

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ing that decision in the next vote. So if we justify the plebiscite in the transfer of territory, i. e., of the allegiance of the human beings concerned, on the ground of democratic principles, we must grant the losing minority in such a plebiscite the same expectation of reversing the decision sooner or later, by a simple majority decision. The alternative would be that of raising the majority required for a decision to a much higher level. That, it would seem, is the vital phase of the problem of the plebiscite.

Plebiscites since the World War is a useful contribution to the literature on the subject. It is essentially useful as an invitation to pursue the subject to a more practical end.

JOHANNES MATTERN

THE JOHNS HOPKINS UNIVERSITY

The Rationalization Movement in German Industry. By ROBERT A. BRADY. Berkeley, University of California Press, 1933.—xxi, 466 pp. $5.00.

Professor Brady is immediately concerned in this book with the origins, practical significance and consequences of the rationalization movement in Germany, i. e., the attempt to apply "the methods of science to all problems arising in the organization and conduct of production, distribution and consumption".

He traces the almost national movement to introduce science into industry to the increasing emphasis upon technical research (stimulated by the increasing size of economic enterprises and a shortage of available natural resources), the planning and development of technological and commercial standards (facilitating the more accurate coördination of economic activity and demanded primarily by machine production) and the enlargement of the principles of scientific management to carry the principle of rational planning beyond the limits of the individual business. The rapid but relatively late industrialization of Germany and the exhaustion and economic and moral disintegration of the war (reinforced by the treaty) prepared it for the discipline necessary for coördinated action.

The practical significance of the movement falls, however, far short of its promises. Rational planning has always been the integrating and driving force of the individual capitalistic enterprise and the movement served to stimulate and accelerate the internal reorganization of enterprises. But Professor Brady reveals in a series of invaluable studies of the major industries how little progress

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has been made in carrying the principle into the only field in which it would have been new. Efforts to coördinate the activities of the various firms in most industries have been confined, in the main, to the formation of cartels which have rarely passed beyond the "negative" phase of rationalization, i. e., the rationing of a volume of production itself based on no rational plan. Mistrust of the stability of cartels has discouraged sacrifices by individual firms for the sake of the greater efficiency of the industry as a whole, with the result that cartels have obstructed the ends of rationalization by increasing excess capacity, maintaining prices and hindering economic progress. Efforts to place the relations between different industries upon a more rational basis have been equally barren of result. The state has failed to fulfill the coördinating functions which are of the essence of rationalization and which industry has failed to perform for itself.

The primary consequence of the movement has been the concentration of economic authority within sectors of activity delimited by technical conditions of production, i. e., within "industries". These states within the state have pursued profits by substantially the old methods. Efforts to secure stability have petered out in the stabilization of prices rather than of productive activity. The instability of both capital and labor has increased and both have turned to the state for a protection that can be attained only by the surrender of part of the power of each group. They have been unwilling to make the sacrifice and the state has been unable to compel it. It has been hampered by respect for laws of competition no longer relevant, by the struggle for control of the state and by its inability to deal with problems of science, technology and finance fundamentally international in scope. In consequence every year has been deepening confusion concerning the objectives and methods of rationalization and the movement has failed to bring economic security by mitigating or preventing cyclical fluctuations in industrial activity, minimizing the waste of capital and labor in the process of utilizing new methods of production or improving the lot of the worker.

Professor Brady regards rationalization as primarily an "organizational" problem and the ugly word bespatters his pages (which indeed are too much encumbered with ponderous polysyllabic teutonisms). His analysis of the major industries is in terms of the patterns of property control, the internal problems of organization of production units, inter-industry relations and the organization of

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marketing. In consequence of this emphasis on structure rather than functioning he offers little analysis of the outcome of this organization in terms of price and wage policies (especially with reference to cyclical fluctuations in activity) and profits, an omission inconsistent with the author's own statement of the criteria by which rationalization must be judged (which includes its effect upon the distribution of income). His summaries of conditions in each industry refer to failure to increase economic security, to improve the lot of the worker or to eliminate cutthroat competition, but the references rest upon little or no support in the body of his analysis. His interest in the process of change would also suggest more consideration of these aspects of rationalization, the manner in which a complex of relationships functions being the major determinant of its subsequent adaptation.

Professor Brady's scholarly and penetrating study is more than a contribution to the economic history of Germany in recent years or to the study of capitalism in evolution. The relation between the political and social implications of changes in industrial technology and the discontents and upheavals of recent years is obvious. Professor Brady offers a vantage point from which the broad currents of change in the past can be seen and the choices for the future contemplated. Germany has faced peculiar difficulties arising out of the war and the fact that it has not been a balanced economy. For the rest its problems are those of most capitalistic countries and especially those of America. Concentration of authority over large portions of the means of production denies the benefits of competition without yielding those of rationalization in the broader sense. But, despite the claims of technocrats, rationalizers and those who compare economists unfavorably with engineers and technicians in general, it is evident that science is not enough in industry. Efficiency cannot be secured without planning but social ends must be selected before they can be rationally pursued. Considerations of efficiency are nevertheless important in the selection of ends and, if authority is to be centralized but management decentralized in order to preserve as much as possible of individual initiative, difficult problems in the technique of control must be solved. The realization that the deliberate selection of social objectives will involve reconsideration of the status of groups and classes is at the root of the fear of centralized planning and of the increasingly violent struggle for control of the state. Yet the choice lies between planning and periodical collapse. The drift of events and especially the drift of

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technological change "has presented to the Germans—as to most capitalistically organized countries—a problem which they appear to be unable to solve. They cannot turn back to the old order: yet they seem to lack the social philosophy, the singleness of purpose, and the will to take the next step" (p. 322).

ARTHUR ROBERT BURNS

COLUMBIA UNIVERSITY.

Treaties Defeated by the Senate. By W. STULL HOLT. Baltimore, The Johns Hopkins Press, 1933.—vi, 328 pp. $3.00.

In this study of the struggle between the president and the Senate over the conduct of foreign relations, as the book is described in the subtitle, Professor Holt makes a scholarly, worth-while contribution. The first two chapters which relate to the origin of the treaty-making clause in the Constitution, and Senate action upon treaties down to 1815, respectively, may be regarded as introductory. The period from 1815 to 1841 is called one of "Quiescence". The four years of Harrison and Tyler are covered in a chapter entitled "An Important Victim of Politics". The headings of the remaining six chapters are as follows: "Some Minor Examples, 1845-1865"; "The Defeats of a Discredited Administration"; "A Period of Senatorial Domination, 1869-1898"; "An Exception, The Peace Treaty of 1898"; "Bitter Contests with Strong Presidents, 1899-1919"; and "The Versailles Treaty".

In order to determine which treaties were lost either because of domestic politics or because of the contest between the president and the Senate, the author undertook to examine the circumstances surrounding the defeat of each treaty which failed of completion by virtue of Senate action. This was well done; although in some cases, of course, no new ground was broken. A full list of the treaties so studied cannot be given here. One of several rejected because of partisan politics—and this occurred more frequently during or immediately following presidential election years—was the treaty for the annexation of Texas, April 12, 1844; the general arbitration treaty with Great Britain, January 11, 1897, was wrecked because of the Senate's jealousy of its constitutional powers; while both domestic politics and the struggle between the two branches of the treaty-making power operated in the defeat of the Versailles Treaty. It appears that such conflicts, undoubtedly not anticipated by the authors of the treaty-making clause, have been numerous.

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For his information Professor Holt relied mainly upon: "(A) deductions from the official record of what happened, (B) the testimony of senators, presidents, members of the Cabinet and diplomatists who participated in the proceedings or had an official relation to the affair, and (C) the opinions of contemporary observers who enjoyed no official connection" (p. 309). The reviewer emphasizes here the private letters, diaries, memoirs, *et cetera*, printed and in manuscript, of officials interested in the fate of individual treaties. From this type of material the writer secured much valuable evidence which he used skilfully in explaining, so far as possible, senators' votes on treaties. Therein lies the greatest value of the book. Unfortunately for the author and other students of this general subject, as yet the Journal of the *Executive Proceedings of the Senate of the United States of America*, the official record of the executive sessions of the Senate, has not been made public for the period since March 9, 1901. In the later period, too, fewer private papers of officials are accessible. Such conditions necessitate a more thorough search in the records of contemporary observers "who enjoyed no official connection" (for, as is well known, news of secret sessions of the Senate often has leaked out), and in official documents other than the *Executive Journal*. These have been made all the more useful for the purpose by the fact that in recent years the Senate has discussed more treaties in open session, and often has removed the injunction of secrecy from the proceedings on others which had been considered in closed session.

The book under review is carefully documented, and is provided with copious notes. The author has prepared an excellent annotated bibliography. It does appear, however, that he has failed to note some of the more recent literature on the general subject with which he deals.

Treaties Defeated by the Senate is well written. Although a little less than one-half of the space given to the subject proper is allotted to the period since 1897, the proportion is good. It is not difficult to imagine that in more than one instance the author must have found it necessary to suppress an inclination to dwell at length upon the diplomacy connected with a treaty, and its provisions; but the book preserves an even keel. The subject matter involved easily lends itself to a technical treatment; the study, however, is interesting and readable, yet not at the sacrifice of clarity, impartiality and accurate reasoning. The proof-reading was exceptionally well done.

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In the opinion of the reviewer, Professor Holt should have taken into account some of those treaties which, though eventually approved by the Senate, were rejected on at least one vote and then reconsidered. Such, for example, were the commercial treaty with Mexico, January 20, 1883, and the extradition convention with Great Britain, July 12, 1889. A fuller explanation, as such, of the technical procedure of Senate action upon treaties would have been helpful to the lay reader. The book lacks a summary or conclusion. Despite the good style in general, the author could have improved upon the phraseology in a few expressions, such as "going through" the *Executive Journal* (p. 40, note 4), and "they had politics" in England (p. 43). One tires, moreover, in thinking of treaties in terms of battlegrounds (e. g., pp. 122, 182, 303-304).

These minor weaknesses detract but little, however, from the general excellence of a book which may be regarded as the best work that to date has appeared on the subject of Senate action upon treaties.

R. EARL MCCLENDON
SAM HOUSTON STATE TEACHERS COLLEGE

What Everybody Wants to Know about Money. Edited by G. D. H. COLE. New York, Alfred A. Knopf, 1933.—xii, 432, xv pp. $3.00.

This is a symposium on monetary problems consisting of twelve chapters prepared by a group of nine economists from Oxford University. The study was planned and edited by Professor G. D. H. Cole, who wrote the introductory and concluding chapters, in addition to one on "The Socialisation of Banking". The other chapters include discussions on: "Currency and Central Banking"; "Commercial Banks and Credit"; "Foreign Trade and the Exchanges"; "Capital and Investment"; "Money and Prices"; "Four Monetary Heretics"; "Investment Savings and Public Finance"; and "Debt". The study is well planned and maintains a uniformly high standard of scholarly achievement, at best a very difficult task in a joint effort.

Though each author is necessarily responsible for his own contribution, the book does reveal, in the words of the Introduction, a reasonable community of theory. This permits us to discuss the theoretic premises and the conclusions of the study as a whole, rather than those of the separate chapters. The more significant of these may be summarized somewhat as follows:

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(1) The authors reject the premises underlying the whole theory of price stabilization and express distrust of "such new experiments in monetary manipulation" (p. 397) as have been undertaken. By implication, the monetary policies of the Roosevelt Administration must be included in this sweeping criticism, which comes not from economic "Tories" but from persons whose philosophic outlook would be probably far to the Left of that of the "New Dealers".

The idea of a general price level, one of the basic premises of the proponents of price stabilization, is declared fallacious for the reason that prices are not affected equally or simultaneously by a change in the quantity of money (p. 256). It is held that prices could be stabilized only in a planned socialized economy where the direction, as well as the size of the flow of credit, would be controlled (p. 268).

Even if under such conditions price stabilization were theoretically possible, the authors concluded it would not be desirable. The effects of the monetary system should be "neutralized" as much as possible. Under such an arrangement, prices would decline as productive efficiency rose (p. 46), permitting consumers to share in the benefits of industrial improvements.

The American efforts to stabilize prices from 1924 to 1929 led to the very undesirable result of bolstering the prices of the products of protected industries (p. 50). Those commodities whose prices were fixed in the world markets, cotton and wheat, fell in price. "If the American experience of 1928-1929 has taught the world nothing else, it should at any rate have taught it the danger of a facile belief that to stabilize the general level of prices is to insure the neutrality of money in economic affairs" (p. 53).

If stabilization of any type is to be attempted, the authors suggest the stabilization of the general level of money incomes (pp. 272 *et seq.*) Space did not permit an elaboration of this idea, but the conclusion was stated rather categorically that if this were done, an increase in productive efficiency would be accompanied by declining costs which would be transmitted to consumers in the form of lower prices.

(2) It was impossible, in the opinion of the authors, for England to have continued on the gold standard in view of the resistance of prices and incomes to deflation (p. 62). The abandonment of the gold standard brought the structure of income and prices into realistic relation to the gold value of the currency. The resultant depreciation in sterling exchange, more effectively than the tariff enactments, helped to maintain England's relative position in the

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face of world depression. The authors deny that sterling has been depressed below its natural level (p. 204). The conclusion is reached that in general foreign exchange restrictions and the control of the foreign exchanges have been more effective instruments in the stifling of foreign trade than has the wave of new and higher tariffs (p. 60).

(3) The failure to develop a technique of joint international control was responsible for the world-wide breakdown of the gold standard (p. 78). In the pre-war period the gold standard was in effect a sterling standard. "London, as the recipient of by far the greater part of the world's current output of gold, and as overwhelmingly the most important financial centre, was in a position so to manipulate the gold standard as to make it in effect a sterling standard" (p. 77). Though in the post-war period the United States became increasingly important as a gold-standard nation, it was not important enough in the field of short-term finance to exercise complete control. Control was divided and the technique of a divided control had not been developed.

(4) The abandonment of the gold standard in the United States is viewed as a wholly voluntary act and represented as an effort to raise the "American price level to a point at which equilibrium would again be reached between the selling value of goods and securities and the debt structure" (p. 66). Doubt is expressed by Professor Cole of the success of the "inflationary" efforts of the United States. Particularly is he skeptical of the ability of any government, under capitalism, to prevent a reflation revival from leading to an unsound boom which will engender a fresh and even worse depression (p. 82).

(5) In an analysis of the credit situation in England, the joint-stock banks are severely censured for their failure to assist in the reorganization of British industry. The explanation given is that they think in terms of the problems of the individual firm rather than of the industry as a whole (p. 149).

(6) In forecasting future trends, the authors view the nationalization of central as well as of commercial banks as an inevitable consequence of the extension of public control (chapter xi), and conclude that there can be no effective socialization with commercial banks in private hands. In the field of investment credit, a National Investment Board would control security flotations and the use of savings.

What Everybody Wants to Know About Money is a work which deserves careful study. With many of the conclusions the reader would doubtless disagree, but not with the exposition of the workings

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of the gold standard, the problems of central bank policy, or the difficulties of price stabilization. Without wishing to detract from the excellent standard set by the rest of the study, the reviewer would cite the chapters on "Currency and Central Banking", "Money and Prices" and "Four Monetary Heretics" as particularly fine. The last one analyzes carefully the doctrines of Major Douglas, Professor Frederic Soddy, Silvio Gesell and Robert Eisler.

This volume should prove particularly enlightening to the average American, who for a long time has been living in a welter of monetary controversy. With its help he might be able to find his way clear of the fog and doubtless would conclude on the basis of the theory developed that the monetary enactments and policies of the past eighteen months should have been far different from those followed.

BENJAMIN HAGGOTT BECKHART

COLUMBIA UNIVERSITY

A Study of Chinese Boycotts with Special Reference to Their Economic Effectiveness. By C. F. REMER, with the assistance of WILLIAM B. PALMER. Baltimore, The Johns Hopkins Press, 1933.—xii, 306 pp. $2.75.

The Chinese are not the only people who have used boycotts. Nor have their boycotts against foreign goods in the last quarter of a century been by any means the only use which they have made of passive resistance in coercing those against whom they had grievances. But the Chinese are the only people who in recent decades have used the boycott as a weapon in international disputes with any marked seriousness or effectiveness. The record of Chinese boycotts thus is the record of what properly can be considered as a series of laboratory experiments in the application of this technique to international relations. Dr. Remer's book comes as a timely and valuable analysis of that record.

As Dr. Remer points out, there are important differences between a unilateral boycott applied by the Chinese people and the action of states in using economic coercion as contemplated under Article XVI of the League of Nations Covenant. He enumerates some of these differences (pp. 3-5), but also remarks that "the Covenant gives a new significance and importance to every form of attempted coercion by non-violent methods" (p. 6). Defining the term boycott as applicable to "non-violent coercion in the economic field used as a weapon in an international dispute", Dr. Remer takes the position

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that "it is neither war nor economic protectionism, but the relation of boycotting to war and to economic nationalism needs to be borne in mind at all times" (pp. 7-8). In this sense of the term, the measures of passive resistance which the Chinese have used against their officials for centuries cannot be called boycotts. Nevertheless, as Dr. Remer makes clear, (chap. ii) experience in the use of passive resistance is one of the two roots of modern Chinese boycotts. The other is the effectiveness of group control over the individual which has been developed through the centuries in Chinese social and economic as well as political life.

After the introductory chapters, Dr. Remer takes up, one by one, the nine important Chinese boycotts in recent years, beginning with the one in 1905 against the United States and concluding with that against Japan which started in 1931 and still continues. Japan was the object of attack, alone or with Britain, in eight of these nine. The trade records for the boycott periods are analyzed in detail, by years, by months, by regions of China and by commodities as far as available statistics make possible. The analyses in the text are supplemented by important trade tables and other material in appendices. A special chapter is devoted to the discussions by and before the League of Nations of the present boycott.

These studies of the individual boycotts make up the bulk of the book. Dr. Remer brings out the difficulties in the way of separating the influences on trade of the boycott as such from the effects of other causes—the World War, exchange fluctuations, etc. He shows, however, that the boycotts have become increasingly effective, and that the one which began in 1931 (he carries the figures in the text only through 1932) did have a very marked effect on the sales of Japanese goods in China.

In the earlier period, he says, the merchants were the chief instigators of the boycotts. The students began to play an important part in 1919. Organized labor and the Nationalist party took significant shares during and since the boycott against Britain and Hongkong in 1925-26. The boycotts have not been activities of the Chinese state as such, however; throughout, the government has followed "a policy of non-interference quite consistent with the political organization in China" (p. 240). The boycotts have been most effective in the South, less so in the Yangtze Valley, least of all in the North.

In the broadest sense, Dr. Remer states, "the success of Chinese boycotting is . . . the success of Chinese nationalism" (p. 247).

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Discussing the success of the boycotts against Japan, he points out that "the fundamental opposition is between Chinese nationalism on the one hand and the continental policy of Japan on the other". Because so many other factors have entered into the Japanese-Chinese situation, it is "impossible to arrive at any conclusion as to the success of the series of Chinese boycotts against Japan" in this broader sense (pp. 249-50), though the boycotts have had considerable economic effect.

Dr. Remer makes numerous passing references to the possible relation between the boycotts and the growth of industry in China. The value of his study would have been considerably increased if he had gone into this side of the subject more fully. The boycott agitations unquestionably have stimulated the growth of nationalist feeling in China. This has been an important factor in the development of home industry, as well as in other fields. The marked decrease in Chinese imports of cotton manufactures from Japan, for example, has been due in part to anti-Japanese feeling as expressed in the boycotts. The growth of cotton manufacturing in China, however, is fully as important a factor in causing this trade change—perhaps a more important factor. How much of that growth is the result of the feeling which underlay the anti-Japanese boycotts? The question is not easy to answer. Dr. Remer makes no attempt to deal with this and similar aspects of the effects of Chinese boycotts.

Properly so, perhaps; at least to deal with such matters would be to go beyond the scope of a consideration of Chinese boycotts in the narrow sense in which he defines the term. Within the field he covers, Dr. Remer's study is a decidedly valuable addition to the literature on China's trade relations as well as to that on the use of economic coercion in international disputes.

GROVER CLARK

NEW YORK CITY

The Theory and Practice of Modern Taxation. By WILLIAM RAYMOND GREEN. Chicago, Commerce Clearing House, Inc., 1933. —vii, 266 pp. $2.75.

Now and then a book written by a practical man gives evidence that he has something to say. This book was written with an avowedly practical viewpoint. Even the word "practical" appears many times, yet it is an informing and interesting little account of taxation, for in it Judge Green of the United States Court of Claims

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has written out of his fifteen years' experience on the Ways and Means Committee of the House. He has, as the footnote references indicate, consulted a few standard works, but the merit of the book, according to the reviewer, lies in its readable presentation of the experience and the conclusions of its author, drawn from years in drafting tax legislation.

One inclined to be critical might, it is true, point to the lack of significant material and conclusions new to students of taxation. He could also question the positive assertion made on page 41 that income taxes have not prevented the accumulation of capital in the United States, however strongly he might believe it to be true. The statement made on the concluding page that the system of taxation in New York "has been constructed with great care and ability by its Tax Commission and may well serve as a model for the other members of our Federal Union" will certainly draw a smile even from those students of taxation who recognize most clearly the merits of the New York system.

Such emphasis on points dear to the academic mind, would, however, in the reviewer's opinion, be misplaced in this instance. Of more importance is the fact that a person unlearned in matters of taxation will gain a great deal from reading this little book. And the person familiar with taxation will do well also to read it. The judge is in the main sound and liberal in his views of taxation, and he has sprinkled their presentation with the salt of his own observations.

Judge Green is a firm believer in income taxation. In fact, seven of the twenty-two chapters in his book are devoted to personal and corporation income taxation. He is not impressed by the criticism that revenues from income taxation decline heavily in a period of depression. He finds no evidence that the income tax has injured business, and in discussing the reduction of the national debt made in the prosperity era before the depression he suggests (p. 37) that "it would have been better to make a still further reduction in the nation's indebtedness at a time when the income tax was easily paid and very productive."

The judge's observations on the French and British systems of taxation are of especial interest. He finds the French system of taxation to be unduly complicated, inequitable in places, and on the whole poorly administered. The British system on the contrary receives his praise. He is much impressed with the efficiency of British tax collection, remarking that part of this efficiency is due to an

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excellent civil service system whereby good men are obtained, kept and honored. By contrast, he notes that in the United States many capable officials in the Bureau of Internal Revenue have been lured into private practice in which they have taken cases against the government. He remarks that despite the technical superiority with which our income tax statute is drafted, the British law probably works more smoothly than the American. This he explains by the greater authority given treasury officials in England to adjust and compromise disputes respecting taxation.

The headings of the chapters included in this work give but slight indication of any plan of presentation. The reader, however, finds that these chapters link into one another naturally. The reading is pleasant, for the author has smoothed the way by writing a simple and interesting account even of technical matters. One feels, too, on completing this book, that much ground has been covered in a relatively small number of pages. Yet the progress of the work never seems to be forced. Leisurely writing makes for leisurely reading.

M. SLADE KENDRICK

CORNELL UNIVERSITY

English Political Thought in the Nineteenth Century. By CRANE BRINTON. London, Ernest Benn, Ltd., 1933.—vii, 312 pp. 15 s.

Mr. Brinton has adopted, among a number of possible methods, that of men, and ideas or opinions as they descend to the crowd. He admits that "the choice exercised would appear to have inevitably something of the subjectivity of critical artistic judgment" (p. 5). However, he refuses to be a victim of that "easily observable inferiority complex which most social scientists display" (p. 7) when they make dogmatic assertions as to the finality of their method.

The volume under consideration is in reality a series of essays on nineteen writers of the last century. They are grouped under the headings of "The Revolution of 1832", which includes studies of Bentham, Brougham, Owen, Cobbett and Coleridge; "Chartism", which deals with J. S. Mill, Cobden, Kingsley, Disraeli, Newman and Carlyle; and "The Prosperous Victorians", in which are examined the ideas of Bagehot, Acton, T. H. Green, Spencer, Bradlaugh, Morris, Maine and Kidd. The general headings merely indicate that from a critical point of view the writers discussed may be regarded as primarily influenced by tensions of the period in which

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they lived. As the author remarks, the nineteenth century is difficult to discuss from the standpoint of ideas, since there are almost as many ideas and political faiths as there are men.

This volume continues the process of reëvaluation of the thinkers of the nineteenth century in England; it assists in drawing certain writers from obscurity into the light of logical and moralistic criticism. Thus the essay on Charles Bradlaugh is probably not a work of political supererogation. Perhaps the same may be said of the discussions of William Cobbett and Benjamin Kidd. "To write of Cobbett as a political thinker implies, in a sense, a false start", says Brinton, "for properly speaking, Cobbett never thought at all" (p. 61). Here, clearly, ideas are descending to the crowd. Likewise, Kidd's "'Projected efficiency' is quite the dimmest of the gods" (p. 292). Certainly the author is correct in believing that to understand a period one must not always write histories of "ideas in the grand manner", but that "a series of studies in political opinion" (p. 240) may be extremely useful. With Spengler, he might agree that "Only its necessity to life decides the eminence of a doctrine."

None can deny the author's penetration into the literature of the nineteenth century. Nor can one deny that he has likewise mastered Disraelian and Tory wit and epigram (pp. 146-47), and it is not imperceptible that he uses them well at times against American doctoral aspirants, the *Congressional Record*, the science of pedagogy and American women's clubs. However, few direct commitments are made in this study. One gets the impression that Victorian England has been much underestimated; especially is the legend of the Victorian synthesis and unity subject to doubt, if not outright denial. One gathers by implication that English liberalism in the period studied is quite superior to liberalism elsewhere; that the author is an unrepentant pluralist; that the roots of this view of liberalism are to be found in the nineteenth century, especially in the work of Lord Acton (pp. 199, 208-09); and that there are "such obvious facts as the group will" (p. 290).

The essential meanings of the nineteenth century to the twentieth are carefully explained. The century turned from the Age of Reason to science—history and biology—but neither of these methods could ultimately solve the problem of values in human relations. Mr. Brinton, it would seem, believes that much of our contemporary social science will merit the same reproach. The century failed in its skepticism; it believed, somehow, that history, like nature, would

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explain itself (p. 296). The England of the nineteenth century discovered the "dynamic state", whereas the previous period believed in an unchanging political form once the proper principles were found. The nineteenth century reconstructed the order destroyed with the collapse of the *ancien régime* and it did this by the study of history and biology guided by the idea of progress. The period sided with heredity as definitely as that before had sided with environment. "Heredity served the Victorians as original sin had served the Church. . . " to stabilize society (p. 303). Yet one is not sure from reading the work whether in the nineteenth century the groundwork was laid for a liberalism that can survive.

FRANCIS G. WILSON

UNIVERSITY OF WASHINGTON

Servitudes of International Law. A Study of Rights in Foreign Territory. By F. A. VÁLI. London, P. S. King & Son, Ltd., 1933.—xv, 254 pp. 12s. 6d.

Dr. Váli has made some contribution to our knowledge of the moot problem of international servitudes in his emphasis upon the practice of nations, but unfortunately he fails to clarify the doctrine to any appreciable degree. He gives no explicit definition—and in such a controversial topic definitions are fundamental. One is required to glean the author's concept of servitudes from hints dropped here and there throughout the book, and from the implications of the examples cited. Thus even one who has spent years in the study of international servitudes is left in considerable uncertainty, at the end of a careful reading, as to how Dr. Váli would actually define them. One has therefore a sense of incompleteness, which may have resulted from an attempt to confine the book to a purely objective analysis of international practice, but none the less leaves one seeking supplementary clarification, and some more effective presentation of the author's conclusions.

Dr. Váli apparently intends to include in the classification of servitudes all rights in foreign territory, provided they are "real" or "absolute" rights; i. e., rights possessing legal "efficacy against the world at large" (pp. 48-49, 21-22). As he quite properly says, "If it can be adequately proved that there are relations appurtenant to territories within a foreign State which another State enjoys and these relations possess an 'absolute' or 'real' character in contradistinction to the 'personal' character of ordinary interstate relations,

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the battle in favor of an independent concept of law has been won" (p. 49).

He proceeds to assemble an exceedingly useful array of evidence based on the actual practice of states as expressed in treaties and interpreted by tribunals; there is, however, no reference to diplomatic correspondence. In a series of thirteen brief but generally admirable chapters, he presents and discusses a dozen types of "rights in foreign territory", ranging from fishery and transit rights to demilitarized areas and the administration of foreign territory. Whether or not one accepts all these examples as true international servitudes (and the present reviewer would challenge several), all students of international law will be indebted to the author for his clear analysis of a great number of important international relationships. On the other hand it seems unfortunate that he felt bound to eliminate all general rights from the servitude category with the dogmatic statement: "Since general restrictions can never be 'real' in character, since every state is bound to recognize them, there is neither ground nor necessity for separating them from other restrictions of a general nature. . . . Nor does there seem to be any reason for applying the term 'servitude' to localised general restrictions of territorial sovereignty" (such as the present status of the Kiel Canal; p. 55). Thus the very rights which seem most important to some authorities are ignored by Dr. Váli—to our great loss, for the examples he has cited he has handled very well.

There is a particularly good chapter on "The Economic Use of Waters" (pp. 146-154), another on the free zones in Savoy and Gex (pp. 156-167), and an excellent summary of the North Atlantic Coast Fisheries question (pp. 71-87). His treatment of the American rights in Newfoundland is the most complete this reviewer has ever seen in so brief a compass, although Dr. Váli is not quite clear as to the implications of the "partition of empire" theory, to which he erroneously refers as "partition of sovereignty" (p. 84). The section on the French fisheries is disappointing, but that dealing with rights in the Eastern Adriatic is very interesting and important. I should challenge the inclusion of the Japanese fishing rights in Russian waters, but Dr. Váli contends that "The intention of creating a permanent status is clearly indicated" by the provision that the treaty "shall be renewed or modified at the end of every twelve years"—claiming that this does not permit abrogation (p. 103). In general Dr. Váli tends to minimize the requirement of permanence, and includes a number of arrangements of definitely limited duration,

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such as the administration of the Saar Territory (pp. 192-197) and the Chinese leases (pp. 202-4). He contends that servitudes need not be concluded "for ever"; that "The permanency which is required is the continuous efficacy or operation of the right", even if it is "limited to an agreed number of years" (p. 227). This is a very interesting suggestion, and well worth consideration, though it runs counter to the generally accepted theory.

International lawyers will find the book stimulating, though not completely satisfying; chapter ii of Part D ("Consequences of the Territorial Character of Rights in Foreign Territory") is the best of those dealing with theory. One must read the whole book, however, in order to understand the author's point of view, for he introduces brief theoretical discussions *á propos* of the various examples of international practice cited in Part C; and although Part D is entitled "Inferences Drawn From the Practice of States", it does not fulfill its promise of providing any general conclusion.

HELEN DWIGHT REID

UNIVERSITY OF BUFFALO

Russia and Asia. By PRINCE A. LOBANOV-ROSTOVSKY. New York, The Macmillan Co., 1933.—viii, 334 pp. $2.50.

Soviet Economic Policy in the East. By VIOLET CONOLLY. London, Oxford University Press, 1933.—ix, 168 pp. 6s. 6d.

Between these two books there is a vast difference in method and merit. *Russia and Asia* is a compilation based on secondary sources. The various aspects of Russia's relations with Asia are treated without cohesion or proper historical perspective.

The rash imperialistic policy inaugurated by Nicholas II is attributed to the death of Prince Lobanov, the Russian foreign minister (p. 226), and, incidentally a member of the author's illustrious family. Equally questionable assertions are found through the book. War between Russia and Germany became inevitable after the appointment of Liman von Sanders to the command of the Erzerum Corps (p. 254). The tendency of the Caucasian peoples to quarrel among themselves made their independence short-lived (p. 269). Soviet policy in the days of the Baku Congress was guided by men who were still in the stage where practical politics had not shattered their belief in the power of abstract principles (p. 283)—apparently Lobanov considers Lenin a mere theorist! Anyone acquainted with the state of the Russian army at the time of the armistice ending the

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hostilities of the Russo-Japanese war will be surprised to learn from *Russia and Asia* that the Russian forces were then again in good fighting order, whereas the Japanese were showing signs of an imminent breakdown (p. 234).

Several of the factual errors are more obvious. For instance the author says that the Czar was killed during the advance made by Kolchak's forces (p. 260). As a matter of fact, Admiral Kolchak became the head of the Omsk government only on December 1, 1918, while the Imperial family perished in July of the same year. Contrary to author's assertion, Ungern Sternberg never served with the Siberian Cossack Host.

Russia and Asia does not add anything of value to the literature of Russia's relations with Asia. Some of its hasty conclusions may mislead readers not familiar with the subject.

Miss Conolly's book is a work of quite different character. The author draws with a well trained hand the picture of the economic relations of the U. S. S. R. with Turkey, Persia, Afghanistan, Mongolia, Sinkiang and Tana Tuva. The present basis of Soviet trade with the East is profit. It is a far cry from the halcyon days of the Baku Congress to the practices of the Gosvostorg organized in 1930. The evolution of these relations is a highly interesting process and Miss Conolly does full justice to it.

In the parts dealing with the pre-war conditions of Russia's economic relations with Asia the book is open to criticism. Here Miss Conolly's knowledge is clearly of a superficial nature. For instance, she is apparently not aware (p. 122), that as early as in 1872 seven important silk-spinning mills were established in Russian Turkestan, and that there was a school of sericulture near Askhabad at the time of the Russo-Japanese war.

The reference to the provisions of the Brest-Litovsk treaty admitting German goods in transit to Persia and Afghanistan as indicative of the new spirit toward the East is an obvious error. These provisions were a concession to German capitalism and not a new departure in the Soviet policy in the East.

These remarks, however, are not meant to indicate that the main theme of Miss Conolly's book is treated haphazardly or without adequate knowledge of the subject. Quite to the contrary: her book can be safely recommended to students of Soviet trade relations. It is a compact, well documented work, free, on the whole, of political bias.

D. FEDOTOFF WHITE.

MERION, PA.

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BOOK NOTES

The problems of monetary theory, already cast in molds that would have been almost unintelligible to the economists of twenty years ago, are attracting an ever-increasing amount of attention. In his *Essays on Monetary Management* (London, P. S. King & Son, Ltd., 1933; viii, 230 pp. 7s. 6d.), Mr. J. Stafford offers some interesting new ideas. In the first essay, on Income and Banking Policy, he examines the effects of increased bank loans and open market operations on the size and composition of the national income, on output, and on similar major economic factors; and in the process casts light on the forces that operate to reverse a boom or a depression. His chief new tools of analysis are the proportion of income which is saved, and the proportion of savings which is "hoarded". I have misgivings about the propriety of treating "hoarded" savings as though they were simply abstracted, and also doubts about the practical defensibility of trying to distinguish active from inactive deposits; a more usable tool for accomplishing the same ends is, I think, the circular velocity of deposits as a whole, discussed in a recent article of mine in the *Quarterly Journal of Economics*. And surely something is wrong, or missing, in the solution of the equation on p. 42? Nevertheless, I found the essay very suggestive; and I feel a good deal of sympathy with the general business-cycle theory also adumbrated in it, which runs in terms of increasing frictions and their subsequent alleviation. The second and third essays deal more specifically with the problems of commercial and central banking in relation to economic equilibrium, and are perhaps less novel, but they too contain a good deal of subtle reflection. Every monetary theorist will wish to read this little book, and to ponder its not always crystalline propositions.—JAMES W. ANGELL.

Professor Willard E. Atkins' recent volume on *Gold and Your Money* (New York, Robert M. McBride & Co., 1934; 164 pp. $1.75) is an exposition of various monetary problems which have figured so prominently in recent public discussions. Particular attention is given the Roosevelt monetary program. Written in a popular vein, the work is intended to appeal to the lay reader rather than to the academician. The author is critical of the monetary

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measures of the administration, and finds the explanation of trade fluctuations in non-monetary factors. A striking parallelism is included of the monetary proposals of "Coin" Harvey and of Father Coughlin—the one emerging in the depression of the nineties and the other forty years later. Professor Atkins concludes that in time Father Coughlin, like "Coin" Harvey, will become a museum curiosity, and just as certain is the fact that future depressions will give rise to other monetary quacks, who would "prime the industrial pump" by the simple arithmetic process of halving the dollar.—BENJAMIN HAGGOTT BECKHART, Columbia University.

Le Crédit, by Louis Baudin (Paris, Fernand Aubier, 1934; 264 pp. 15 francs), is the first in the series *History of Labor and Economic Life* which will endeavor to present, in popular form, the historical background of certain modern economic problems. It is the aim of the editors (Léon Cahen and Raymond Ronze) to escape from the purely legalistic approach to economics, and to achieve a synthesis of history and law which will be intelligible to the average reader as well as to students. In France, where economics is unfortunately still taught almost entirely by the Law Faculty, such an effort is especially laudable. The present volume offers, in the first of its four sections, a definition of credit and a simple description of modern credit institutions and their functions. The second and third sections, respectively, give an account of the origins of these institutions as far back as the beginning of the nineteenth century, and their development in the early part of the twentieth century. The fourth and last section is a discussion of the present crisis, the situation of the leading countries, and their efforts to overcome their difficulties. The author's viewpoint is moderate and typically French, in favor of international coöperation, but opposed to close organization. His treatment is broad in scope rather than deep, but his views are presented with engaging simplicity and clarity.—MARGARET G. MYERS, Vassar College.

In his latest book, *The Coming American Revolution* (New York, The Macmillan Co., 1934; ix, 314 pp. $2.50), Mr. George Soule has performed excellently a much needed service. He has taken the idea of revolution to pieces and put it together again with special reference to its nature and possibility in the American scene. So much attention is properly devoted today by thoughtful people to the probable processes of social and economic change that the purpose and conclusions of this volume take on special timeliness. First the idea of revolution is analyzed and the picture is given of

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shifting class alignments, new loyalties and transitional reforms, the weakening of those classes which had power and the achieving of power by those to whom it is new. The place of violence in this process is largely after a formal shift of control when reactionaries have to be kept in subordination. Second, the author traces the changes which occur under the surface which help to create the shifts of power. And here he lays stress on the growing incompetence of the powers that be to cope with the problems and demands they face. He believes that in America evidences of this inability of rulers to satisfy the people are increasing in magnitude. Next comes an evaluation of the New Deal which is an admirably restrained, fair yet critical appraisal of the possibilities of adequate social planning under capitalism. Finally there is a venture in prediction which concludes that a genuine and profound revolution is under way in this country, that it will take a couple of generations to effect, that the process will not be a happy one, but that the outcome will be "a chance for social management to learn its task by experience" after private profit-making industry has shown its inability to survive. Many will find this book discouraging and gloomy in upshot. But the tough-minded and the realists will see here a profound grasp of facts and trends which essentially constructive in implication. Without any doctrinaire preconceptions Mr. Soule looks honestly into the future and what he sees seems to this reviewer to be a reasonable projection of the working of present forces. If Mr. Soule is wrong, he is gloriously wrong and the victory would then seem to be with the forces of darkness and chaos.—ORDWAY TEAD, New York City.

To smart, progressive and untroubled professors the announcement of the publication of the textbook *Urban Society* (New York, Thomas Y. Crowell Co., 1933; 724 pp. $3.50), by Noel P. Gist and L. A. Halbert, is the answer to the question of what text to use in the new academic year. The text provides an extensive aeroplane view of the layout of streets and buildings of our larger urban centers, with a description of the life and activities taking place in these avenues and structures. Much of the picture, of course, is the familiar, almost daily, one that greets the eyes of those who live in these cities, as they move about. The special contribution made by the authors consists, I suppose, primarily in the employment of their own code in applying adjectives in describing the several aspects of the urban scene, for the text is a study in adjectives. A sample descriptive sentence may serve to illustrate the method. "Within earshot of the city's fashion row is the slum, clinging like a malignant

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cancer to the growing organism of the urban community." This is the technic of the literati, of Aristotle, and not that of Galileo or Pasteur. Engineers, architects and other men of affairs, together with numerous miscellaneous persons, add to or change urban society; then the sociologist comes along, looks at it, feels, perhaps deeply (according to Watson experiences a gut disturbance), and plasters selected adjectives over the face of the new urban scene. But if scientific appraisal, and not merely description, is to be considered a serious part of the work of urban sociologists, it seems, at least to the writer, that they will have to develop a science of values, or of the orientation of behavior—and that is not necessarily an impossibility.—ROBERT R. KERN, George Washington University.

The appearance of an English translation of Émile Durkheim's first great work, *De la division du travail social,* is of interest to all those who have derived inspiration from the thought of this eminent French sociologist. George Simpson, in *Émile Durkheim on the Division of Labor in Society* (New York, The Macmillan Co., 1933; xliv, 439 pp. $3.50), has combined in this translation all that is worth while in the first, second and fifth French editions, published in 1893, 1902 and 1926 respectively. To this he has added his own critical estimate of Durkheim's work, and a brief index of names. It is fortunate that the classic preface to the second edition," *Quelques remarques sur les groupements professionels",* has been included, and that the translator has thought fit to add in an appendix Durkheim's discourse on the science of ethics, found only in the introduction to the first edition, now out of print. The translation, itself, which has been made from the first and fifth editions only, is well done, and with some exceptions, is free from the stilted phraseology which a too literal rendition of a foreign construction often makes unavoidable. Although Simpson considers Durkheim "the greatest social thinker that has come out of France since Proudhon, far greater than Comte" (pp. x-xi), his estimate nevertheless resolves itself into a penetrating and worth-while analysis of Durkheim's limitations—his methodology, his positivism, his realism, the inadequacy of his theory of collective representations, his failure to distinguish the division of labor in society and the division of labor in the workshop. The reviewer is inclined to think that Durkheim's limitations should be regarded as characteristic of the thought of his age rather than as "his misinterpretation of his own work" (p. xxvi). It is doubtful, too, if reference to one sentence from the first edition of Durkheim's work, omitted in successive editions, is sufficient to disprove

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the nationalistic implications of his writings. This nationalism was chiefly a later development, the natural outgrowth of Durkheim's preoccupation with the theory of collective life, and evidences of it are by no means confined to the war pamphlets, but can be found in *L'Éducation morale, Éducation et sociologie, Sociologie et philosophie, etc.* There are some minor errors which might well be avoided in another edition. "Otherwheres" (p. 114 footnote) should undoubtedly be "elsewhere"; "raise" (p. 118) should be "raze"; one semicolon (p. 181) should be replaced by a comma; in two cases (p. 347) the translator must have intended to write "used" instead of "use"; "absences" (p. 396) is of course a typographical error; and the use of "itself" (p. 412) instead of "himself" is not grammatically correct. It is expected that this translation will lead to an increased knowledge and appreciation of the work of Durkheim, whose influence in sociological thought is, as the translator says, waxing, rather than waning, in spite of his untimely death in 1917.—M. MARION MITCHELL, London, England.

The scope of *Problems of the Pacific: 1933,* edited by Bruno Lasker and W. I. Holland (Chicago, University of Chicago Press, 1934; xvi, 490 pp. $5.00), is indicated in the subtitle, "Economic Conflict and Control". Part one is devoted to what is modestly called a summary of the proceedings of the Banff Conference of the Institute of Pacific Relations. Actually the editors present a valuable study of the topics under consideration at Banff, based upon the data papers of the Conference as well as the round-table discussions, but with considerable independent critical comment. In thus modifying the formal summary of proceedings which has marked previous volumes in this series the editors have made a real improvement. This first half of the volume gives the economic background in the Pacific, showing the similarity of Pacific and world economic problems, although stressing certain peculiarities of the area. Consideration is then given to the specific problems of shipping, currency instability, and differences in standards of living and in labor standards as they condition economic conflict. The discussion thus far covers the entire Pacific area. Attention is then directed to the problems and policies of particular countries. Under the head of Japanese expansion the economic factors underlying the Manchurian adventure and the aggressive Japanese search for extra-imperial markets are adequately presented. The discussion of the United States recovery program, which follows, while necessarily tentative, should be of especial interest to American readers. China's recon-

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struction program, a perennial subject of discussion, the Ottawa Conference as a coöperative attempt at recovery, and the broad question of economic conflict and public opinion, are treated in the last three chapters. The last topic mentioned was apparently included in the Conference discussions to interest those not directly concerned with the technical economic problems on the agenda. It may be noted that the preliminary study of this broad question had not been carried far enough to make its consideration particularly conclusive. With that qualification, it may be said that a high level of discussion was sustained at Banff. Because of that fact, and because of the editorial skill employed in the presentation of the Conference materials, students of international economic problems, as well as those interested in the problems of the Pacific and in the work of the Institute, will find the volume worth careful reading. The second part of the book consists of nine factual studies which students of Pacific affairs will find extremely valuable. These are: the control of industry in Japan; the agrarian problem of China; rural industries in China; Chinese government planning and reconstruction; population and land utilization in the Philippines; the effects of the Ottawa Conference on the trade of Pacific countries; the economic consequences of the Ottawa agreements in the Pacific Dominions; notes on the economic consequences of recent events in Manchuria; and a security pact for the Pacific area. Part three contains appendices of materials pertaining to the Conference and the Institute.—HAROLD M. VINACKE, University of Cincinnati.

The *Economic Handbook of the Pacific Area,* edited by Frederick V. Field (New York, Doubleday, Doran and Co., 1934; xl, 649 pp. $5.00), is a decidedly worth-while contribution to the literature on the Pacific basin. It is a compendium of statistical information concerning approximately one-half the population of the world and discursive material on a great number of topics, ranging from population distribution and effects of environment, through the chief products of the area, to public finance and capital movements. The presentation is novel in that Canada and the United States, and rightly so, are included in the Pacific area. One wonders why the balance of North America and the west coast of South America were not included also. The political and economic student of this area finds here a summarization of a rather complete library of studies, reports and statistical analyses. The particular land areas discussed are: Continental United States, Canada, Hawaii, the Philippine Islands, Siam, the Union of Soviet Socialist Republics, New Zealand,

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Dutch East Indies (Netherlands India), Manchukuo (Manchuria), Taiwan (Formosa), Chosen (Korea), Japan proper, British Malayan Colonies and Australia. Although five hundred sixty-nine tables are found in the nine chapters, Dr. Field repeatedly cautions the reader, for instance: "The figures in the following tables must be used with extreme caution. Statistical services of the several governments are in various stages of development, and the results obtained are not strictly comparable" (p. 3); and "Tables I ***** in a rough way, point out the salient comparable facts in regard to the different means of transportation, which are treated in the following sections devoted to individual countries" (p. 145); or, "yet it is probably the most difficult area on which to gather reliable data" (p. 360); and again, "The 1932 estimate by Dr. W. H. Wong and Dr. T. F. Hou of the National Geological Survey is based on detailed geological estimates of twenty-five provinces and is probably the most accurate one available" (p. 489). The pages on weights and measures would have been more valuable with equivalents also given in American units; so too would the text tables. For instance, the American reader on page 574 finds wheat quoted in bushels and the next page he finds cotton production discussed in hectares and quintals. The chapters on land utilization (ii), transportation (iv) and public finance (v) could well have been illustrated with more charts and graphs. It is regretted that no distinction was made between "cultivated" and "cultivatable" areas. The statement, "The ratio of cultivated to total area is, thus, an important qualification to the reliability of measuring population pressure by the size of the country" is quite true, but takes no cognizance of the ratio of cultivated to cultivatable area—a most important factor in population distribution. The international aspects of population density, distribution and movement (chap. i), food production and consumption (chap. iii), mineral products (chap. viii), agricultural and textile products (chap. ix), trade (chap vii) and capital movements (chap. vi) are admirably presented. The bibliography is extensive and is subdivided into three groups: official publications, private publications and periodicals. The footnote references throughout the *Handbook* not only lead to reliable and first-hand sources of information, but in many instances also give additional or explanatory data of great value. One cannot but help agree with Newton D. Baker, who in his foreword to the book says, "My own copy will take its place in a very small collection of books to which I turn with confidence to get a sound start for thinking about the world problems which are

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dramatized for us in current literature as they escape into the limelight of public discussion from the recesses of state departments and international conferences."—A. M. NIELSEN, New York University.

In *British Regulation of the Colonial Iron Industry* (Philadelphia, University of Pennsylvania Press, 1933; xii, 163 pp. $2.00), by Arthur Cecil Bining, a full examination is made of such facts as are available with regard to the actual development of one important phase of British colonial policy in its economic aspects. Through the isolation of a specific industry and close limitation of the subject, a more concrete picture becomes possible than is usually given by those who deal theoretically with policy in general. After a summary of the principles expounded by several leading historians as basic in England's attitude toward her colonies, the author refuses to consider any as alone a sufficient explanation. Instead, realistically, he stresses the complexity of the problem. His most striking contribution is his emphasis on the influence of organized groups upon legislation. The struggles of rival interests, of manufacturers and merchants, of miners and ship-owners, of Englishmen and colonists, seeking laws for their own private advantage, are seen behind the action taken by Parliament. In this light, much of the controversial literature with its lofty tone of patriotism and its abstract argument proves to have been inspired. Here the study makes a useful supplement to our knowledge of the better-known activities of the West-India interest in colonial matters, or of the battles of the East India and African Companies and their opponents in the commercial field. To the analysis of the factors influencing legislative policy is added a chronological account of the laws actually enacted, with a specially full consideration of the meaning of the ambiguous act of 1750, and with an attempt to estimate the extent to which the laws were enforced. In the latter a study is made of the development of the industry in the colonies from New England to South Carolina, which reveals surprising advancement in comparison with parallel conditions in the mother country, and helps to account for the ability of the colonists to supply themselves with arms during the American Revolution. The whole subject is carefully investigated through official records, both general and local, and, notably, the records of several iron-works themselves. (One welcomes the promise of a study of the iron industry in Pennsylvania in wider aspects.) The style is straightforward; the tone, objective, with no attempt to fit the facts to a theory. Illustrations help in such understanding of technical processes as is needed to make the discussion clear, while

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statistics, partly in the text, partly in appendices, add to the definiteness of the story. The book, brief though it is, has something to offer to students of a number of phases of history; not only colonial policy, but administration, the influences playing on the British Parliament in the eighteenth century, governmental regulation of economic life, as well as the history of American industry and of the Revolution.—JUDITH BLOW WILLIAMS, Wellesley College.

The important and complex problems of nationality and citizenship are coming into their own in scholarly treatment. In *Statelessness: With Special Reference to the United States* (Washington, Digest Press, 1934; xxi, 332 pp. $3.00), Dr. Catheryn Seckler-Hudson offers another proof of this fact by the excellence of her clear and logical presentation of the difficulties of statelessness or lack of nationality, which up to the present time has had no thorough or even adequate discussion. Yet the subject is one of increasing importance, particularly since the territorial realignments resulting from the World War and the legal emancipation of women have caused the loss of nationality on the part of so many persons. The volume at hand is the first to be issued in the American University Studies in International Law and Relations and because of its careful scholarship and clear presentation forms an auspicious beginning for the series. The study falls logically into four sections, first the historical development of the pertinent nationality laws of the United States, then an analysis of the significant interpretations of these laws, and third a discussion of court decisions and administrative opinions and practice. Last but not least in importance are the suggestions for obviation, by unilateral municipal action and then by universal agreement, of the present anomolous situation of statelessness. It is of course a truism that there should be one exclusive nationality for every person and that there should be no stateless person, but nevertheless no progress has as yet been made toward the attainment of this goal, any more than toward the solution of some of the less clear-cut problems of nationality. One has but to recall the complete débâcle of the ill-named First Conference for the Codification of International Law, where after discussion by the representatives of forty-eight countries, so unsatisfactory a convention was drawn up that the delegates of the United States voted against it and refused to sign it, while the convention, even as drawn up, and signed has not been ratified by a sufficient number of the participating powers to make it effective. Dr. Seckler-Hudson suggests that any change or modification of the law of the United

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States with a view to preventing or eliminating statelessness should be of such a nature as to make a fitting portion of a model convention to be adopted by future universal action. The simplest convention would provide, first, that persons born within the territory of a state should acquire the nationality of that state at birth and *retain* such nationality until some other is acquired, and second, that individuals having a nationality should have the right to divest themselves of the nationality of allegiance and acquire another through the process of naturalization in a foreign country, if they are acceptable and are willing to assume the burdens of citizenship there. Dr. Seckler-Hudson does not indicate that all of her suggestions are original, but she does emphasize their importance. She has done a real service to those persons interested in the municipal and international action indicated and to those who realize the necessity for painstaking research in this particularly important field of public law.—JANE PERRY CLARK, Barnard College.

Caesar Rodney, whose correspondence has recently been published under the auspices of the Historical Society of Delaware (*Letters to and from Caesar Rodney: 1756-1784,* edited by George Herbert Ryden; Philadelphia, University of Pennsylvania Press, 1933; vi, 482 pp. $6.00), was not one of the major personages of the American Revolution; but he is an excellent example of the groups of state leaders who, with a background of varied public service in pre-Revolutionary years, including in his case a captaincy in the militia, took their stand with the more aggressive Whigs. As a typical politician of this group, he represented Delaware in the Stamp Act Congress, in the First Continental Congress of 1774, and finally in the Second Continental Congress, where he was able, by a dramatic overnight ride from Dover to Philadelphia, to determine the vote of his state for independence. Conservative opposition, aided by his own preoccupation with military tasks, interrupted Rodney's service in Congress and in the civil administration of the new state; but he threw himself vigorously into the mobilizing of the Delaware militia, in which he received the rank of major-general, and before long he was called to the presidency of the state. His energetic and loyal services in this post were such as to justify the editor's estimate of him as one of the capable "war governors" of the day—comparable with such men as Trumbull of Connecticut, Clinton of New York and Livingston of New Jersey. The personality of the man as reflected in his letters also commands respect. He had difficult problems to deal with—the shortcomings of his militia, the critical situa-

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tion of Delaware in the year of Howe's Philadelphia campaign, the prevalence of trade with the enemy and a troublesome Tory element. Especially admirable was his dogged persistence in the face of physical infirmities which would have daunted most men. A cancerous growth was discovered as early as 1768 and there are moving references to this affliction in the correspondence of his later years. For the most part the letters are reproduced from manuscript originals; of these the largest number are among the Rodney papers of the Historical Society of Delaware, but a variety of other depositories have been drawn upon, including the state archives at Dover and the Library of Congress. In general, the editing seems adequate, but one curious slip may be noted. One letter of Rodney's appears twice—first as of July 22, 1776, and again as of the same day in 1778, which is evidently the correct year.—EVARTS B. GREENE.

Charles S. MacFarland's book *The New Church and the New Germany* (New York, The Macmillan Co., 1934; xii, 209 pp. $2.25) is a valuable study of the relationship of the German Protestant churches to the Nazi state. The situation is fraught with grave possibilities: on the one hand, Protestant ministers and Catholic clergymen are fighting with their backs to the wall for religious freedom; on the other, in this uneven struggle they have shown a moral courage and determination which mark them as strong foes of the radical concept of the "totalitarian" state. Dr. MacFarland, General Secretary Emeritus of the Federal Council of Churches of Christ in America, was prepared for the writing of this book by a long and apparently intimate acquaintance with the German mind and people in general and the German Protestant churches in particular. He also paid a brief visit ("over three weeks", p. viii) to Germany at the end of 1933 into which he crowded conferences with more than sixty churchmen and government officials. They included former Bishop von Bodelschwingh, Reich Bishop Müller, the theologian Karl Barth, Prussian Secretary of the Interior Dr. Frick and Chancellor Hitler. After a description of the German Protestant churches before 1933 and the general church-political background, the author turns in some detail to "the new Evangelical Church" and its organization, direction and recent developments; also, similarly, to the "Free Churches", i. e., the Baptists, Methodists etc., and their situation in the Third Reich. The Jewish problem and Aryan legislation as they affect the churches are treated rather exhaustively, while the Roman Catholic concordat and policy are on the whole described correctly but insufficiently. The chapters

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dealing with the conflicting parties in the Evangelical Church, viz. the "German Christians", the "Gospel and Church Movement", and Barth and his followers, and with the non-Christian teutonic cults, are among the most interestingly written and informing parts of the book. The "Problems Involved" in the relations of the Evangelical Church to the Nazi movement and state and to ecumenical bodies are the special topic of one chapter, but they are really discussed throughout the larger part of the book. Despite his sympathetic approach to the Protestant Church-Third Reich problem, the author is obviously disturbed by his findings. He states, e. g., "the Church is or was in grave danger of conforming and being made subordinate to a social theory which is not only as yet untried but, furthermore, one which, at one significant point at least, is in the clearest opposition to the Christian gospel" (p. 3); ". . . the new *protestants* are endeavoring to preserve the freedom of the Church from the supremacy of the State" (p. 8). If the church is successful, "it may render the Christian world a service in establishing, in a fascist state, the super-nationality of the church and the Christian gospel" (p. 3). In the author's opinion, Hitler's motives "throughout have undoubtedly been good and he has acted at all times in the interests of church, people and nation, as he saw and conceived them" (p. 145). However, of his knowledge and understanding of the various aspects of the church-state problem and their importance, Dr. MacFarland's judgment is very different (pp. 1, 3, 12, 51, 54-55, 143, 166). After describing his interview with Hitler he writes, e. g.: "Adolf Hitler believes in Christianity, but has a very limited understanding of it; in the Church, with even less comprehension" (p. 55). The book was published in January 1934, and in some respects is already out of date. But it retains its value in showing the fundamental problems which will remain as their temporary manifestations will change. Of the latter the author remarks, "if the picture were not confusing it would not be true" (p. 4). Though part of the book may bewilder the reader, most of it contains information which is readily understandable. Translations of the full text of many pertinent church and state documents and the mostly careful documentation are valuable features of the book.—JOHN BROWN MASON, Colorado Woman's College and University of Denver.

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